

**DESIGN-BUILD CONTRACT
2016-173 G (2-1)**

By and Between

**STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES
and
CLOVER PARK TECHNICAL COLLEGE
(Owner)**

and

**Design Builder COMPANY
(Design-Builder)**

For

CENTER FOR ADVANCED MANUFACTURING TECHNOLOGIES

at

**Clover Park Technical College
Lakewood, WA**

INSERT DATE

II. DESIGN-BUILD CONTRACT

TABLE OF CONTENTS

DESIGN-BUILD AGREEMENT	1
RECITALS.....	1
ARTICLE 1: AGREEMENT; INTERPRETATION; DEFINITIONS.....	2
1.1 Documents Included.	2
1.2 Entire Agreement.	2
1.3 Conflicting Provisions/Order of Precedence.	2
1.4 Rules of Interpretation.....	2
1.5 Definitions.....	3
ARTICLE 2: RESPONSIBILITIES OF OWNER	8
2.1 Owner's Responsibilities.	8
2.2 Hazardous Materials.	9
2.3 Owner's Separate Contractors.....	9
2.4 Engagement of Owner's Design-Build Consultant.....	9
ARTICLE 3: RESPONSIBILITIES OF DESIGN-BUILDER	9
3.1 Design-Builder's General Obligations	9
3.2 Design-Builder's Representative and Key Personnel	9
3.3 Design Services	10
3.4 Site Conditions	12
3.5 Construction-Related Services.....	13
3.6 Responsibility for Health, Safety and First Aid.....	15
3.7 Hazardous Materials	16
3.8 Labor	17
3.9 Subcontractors	18
3.10 Governmental Rules and Governmental Approvals.....	19
3.11 Assistance to Owner.	19
3.12 LEED Energy & Sustainability Performance Requirements.	19
3.13 Design-Builder's Performance and Payment Bonds.....	19
ARTICLE 4: DESIGN-BUILDER'S REPRESENTATIONS AND WARRANTIES; LICENSES.....	20
4.1 Representations and Warranties of Design-Builder.....	20
4.2 Licenses.	21
ARTICLE 5: CONTRACT SUM AND TAXES	21
5.1 Contract Sum.	21
5.2 Taxes.....	21
5.3 Washington State Sales Tax.....	21
5.4 Design-Builder's Fee.....	21
5.5 Cost of the Work.	21

5.6	Allowance Items and Allowance Values.	23
5.7	Non-Reimbursable Costs.	23
5.8	The Guaranteed Maximum Price ("GMP").	24
ARTICLE 6: PAYMENT TERMS		25
6.1	Initial Invoice.....	25
6.2	Schedule of Values.	25
6.3	Applications for Payment	25
6.4	Progress Payments.....	26
6.5	Final Payment	27
6.6	Owner's Right to Withhold Payment and Offset.....	27
6.7	Interest.	28
6.8	Record Keeping and Finance Controls.	28
ARTICLE 7: Time for Performance		28
7.1	Commencement of Work.	28
7.2	Guaranteed Completion Date(s).	28
7.3	Substantial Completion.	29
7.4	Final Completion.	30
7.5	Delay Damages.....	31
ARTICLE 8: CHANGES		31
8.1	Right to Make Changes.....	31
8.2	Owner May Request a Change Order Proposal (COP) From Design-Builder:.....	31
8.3	Field Authorizations.....	32
8.4.	Owner's Rights to Undertake or Reject Proposed Changes.....	32
8.5	Changes of Law.	32
8.6	Design-Builder's Requests for Equitable Adjustments.	32
8.7	Computation of Adjustments	33
8.8	Duty to Proceed.	33
8.9	Oral Instructions.	34
ARTICLE 9: ADJUSTMENTS TO THE CONTRACT SUM		34
9.1	Change in the Contract Sum – General Application.	34
9.2	Change Order Pricing – Fixed Price.	35
9.3	Change Order Pricing – Unit Prices.....	39
9.4	Change Order Pricing – Time and Material Prices.	39
9.5	Compensation for Adjustments to the Guaranteed Completion Date(s).	40
ARTICLE 10: ADJUSTMENTS TO THE GUARANTEED COMPLETION DATE(S)		40
10.1	Requests for Contract Time.	40
10.2	Time Extension Permitted if Not Contractor's Fault.	40
10.3	Adjustment of Guaranteed Completion Date(s).	40
10.4	Notice and Supporting Documentation.	40

10.5	Supplementation	40
10.6	Adjustment of Contract Sum for Excusable Delays	41
10.7	Events Constituting Excusable Delay.	41
10.8	Events Not Considered As Excusable Delay.	42
10.9	Design-Builder To Proceed With Work As Directed.....	42
10.10	Disputes; Burden of Proof.	42
ARTICLE 11: CLAIMS AND DISPUTE RESOLUTION.....		42
11.1	Final Offer.....	43
11.2	Claims Process	43
11.3	Timing of Design-Builder's Demand for Arbitration.....	44
11.4	Continuation of Work.....	44
11.5	Owner May Audit Claims.....	44
ARTICLE 12: INSPECTION AND CORRECTION OF WORK.....		46
12.1	Periodic Inspections.	46
12.2	Access to and Dismantling of Work.	46
12.3	Correction of Work.	46
12.4	Work Affected By Corrective Work.....	46
12.5	Owner Acceptance of Non-Conforming Work.....	46
12.6	Removal From Site.	46
12.7	Observance of Tests.	46
ARTICLE 13: WARRANTIES AND CORRECTION OF DEFECTS OR DEFICIENCIES		46
13.1	Design-Builder's Warranty.	47
13.2	Additional Warranty Obligations.....	47
13.3	Correction of Defects or Deficiencies.....	47
13.4	Warranty Survey.	47
ARTICLE 14: TITLE AND OWNERSHIP OF WORK PRODUCT		47
14.1	Clear Title.	47
14.2	Design Work Product	48
ARTICLE 15: DEFAULT OF DESIGN-BUILDER.....		48
15.1	Events of Default by Design-Builder.	48
15.2	Owner's Remedies Against Design-Builder.	49
15.3	Additional Owner's Rights Upon Design-Builder Default.	49
15.4	General Obligations.	49
15.5	Payment Obligations.	49
15.6	No Relief of Responsibility.	50
ARTICLE 16: TERMINATION FOR CONVENIENCE		50
16.1	Owner's Right to Terminate Agreement for Convenience.	50
16.2	Design-Builder's Responsibility Upon Termination for Convenience.....	50
16.3	Equitable Adjustment for Termination for Convenience.	50

ARTICLE 17: SUSPENSION OF WORK	51
17.1 Owner's Suspension of Work for Convenience.	51
17.2 Owner's Suspension of Work for Cause.	51
ARTICLE 18: INSURANCE	51
18.1 Insurance Carried by Design-Builder	51
18.2 Insurance Carried by Owner.	53
18.3 Subcontractors' Insurance.	53
18.4 Additional Insurance Provision.	53
ARTICLE 19: INDEMNIFICATION	53
19.1 Indemnity By Design-Builder.	53
19.2 No Limitation and Waiver of Immunity.	53
ARTICLE 20: NON-DISCLOSURE OF CONFIDENTIAL DOCUMENTS; PUBLIC RECORDS ACT	53
20.1 Distribution of Records.	53
20.2 Public Records Act.	54
ARTICLE 21: INDEPENDENT CONTRACTOR.....	54
21.1 Independent Contractor.	54
21.2 Design-Builder's Responsibilities for its Employees.	54
21.3 Responsibilities of Design-Builder as Principal for its Subcontractors.....	54
ARTICLE 22: DIVERSE BUSINESS PARTICIPATION	54
22.1 Diverse Business Participation.....	54
22.2 Definition.	55
22.3 Contact Information.	55
22.4 Eligible Diverse Business.	55
22.5 Diverse Business Voluntary Goals.....	55
22.6 Intent to Use Diverse Businesses.	55
22.7 Diverse Business Participation.....	55
22.8 Not Exclusive.....	55
22.9 Maintenance of Records.	55
22.10 Advertisements.....	55
22.11 Non-Discrimination.	56
22.12 Violations.....	56
ARTICLE 23: PREVAILING WAGES AND APPRENTICESHIP.....	56
23.1 Prevailing Wages.	56
23.2 Apprenticeship.....	56
23.3 Violation.....	57
ARTICLE 24: NOTICES AND COMMUNICATIONS.....	57
24.1 Notices.	57
24.2 Effectiveness of Notices.....	58
ARTICLE 25: PROJECT PLANNING AND CONTROL	58

25.1	Project Schedule	58
25.2	Updates.	58
25.3	Schedule Format.	58
25.4	Other Information and Alteration.	58
25.5	Owner's Separate Contractors.	59
25.6	Owner's Review and Approval of Project Schedule.	59
25.7	Monthly Reports.	59
ARTICLE 26: VALUE ENGINEERING		59
26.1	Required Information.	59
26.2	Owner's Action on a VECP	60
ARTICLE 27: MISCELLANEOUS		60
27.2	Governing Law, Jurisdiction, & Venue.	60
27.3	Waiver.	60
27.4	Successors and Assigns.	61
27.5	Ethics in Public Service Act.....	61
27.6	Third-Party Beneficiaries.	61
27.7	Non-Discrimination.	61
27.8	Time Computations.	61
27.9	Records Retention.	61
27.10	Antitrust Assignment.	61
27.11	Time is of the Essence.	62
27.12	No Agency.	62
27.13	Survival.....	62
27.14	Integrated Agreement; Modification.	62
27.15	Interpretation.	62
27.16	Further Assurances.	62
27.17	Headings.	62
27.18	Counterparts.....	62
Signatures		63
List of Exhibits		64

DESIGN-BUILD AGREEMENT

THIS DESIGN-BUILD AGREEMENT is made and entered into as of this **XX** day of **MONTH**, 2016, by and between the state of Washington Department of Enterprise Services (“Owner”) and **TBD** Construction Company, the Design-Builder, with its principal office located in **LOCATION**, Washington **98xxx** (“Design-Builder”) (Owner and Design-Builder collectively the “Parties”).

RECITALS

WHEREAS, on or about **MONTH xx, 2016**, Owner issued a Request for Qualifications (“RFQ”) for the design and construction of the Center for Advanced Manufacturing Technologies at Clover Park Technical College in Lakewood, WA (“Project”); and

WHEREAS, on or about **MONTH xx, 2016**, after evaluating the proposals submitted in response to the RFQ, Owner invited three proposers, to submit Proposals (“Proposals”) in response to Owner’s Request for Proposals (“RFP”); and

WHEREAS, on or about **MONTH xx, 2016**, Owner issued the RFP Documents to the proposers; and

WHEREAS, on or about **MONTH xx, 2016**, Design-Builder submitted its Proposal in response to the RFP; and

WHEREAS, after evaluating Design-Builder’s Proposal in accordance with the processes and criteria set forth in the RFP, Owner determined that its interests would be best-served by negotiating with Design-Builder and attempting to reach agreement on the terms of a design-build contract; and

WHEREAS, Owner and Design-Builder successfully concluded the negotiation process, resulting in Owner issuing a Notice of Intent to Award this Design-Build Agreement to Design-Builder.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, intending to be legally bound, the Parties agree as follows:

ARTICLE 1: AGREEMENT; INTERPRETATION; DEFINITIONS

1.1 Documents Included. The Contract Documents include this Design-Build Contract between Owner and Design-Builder (this "Agreement"), as modified or amended, and the following documents which are attached hereto or shall be attached hereto in accordance with the provisions of this Agreement (collectively, "Appendices"), and which are specifically incorporated and made a part of the Contract Documents by this reference:

- Construction Documents prepared and approved in accordance with [Section 3.3.6](#)
- RFP Documents, as defined in Section I, Article II, G of the RFP including amendments thereto.
- Design-Builder's Proposal, including exhibits thereto (as negotiated with Owner)
- Design-Builder's Statement of Qualifications dated **MONTH xx, 2016**.
- Exhibits referenced in this Agreement

1.2 Entire Agreement. Any Work which was performed or caused to be performed by Design-Builder prior to the Notice to Proceed shall be deemed to have been performed under and governed by this Agreement. Those Contract Documents in existence as of the Agreement Date set forth the full and complete understanding of the Parties relating to the subject matter hereof as of the Agreement Date, and supersede any and all negotiations, agreements and representations made or dated prior thereto. Contract Documents may be supplemented, modified or otherwise amended after the Agreement Date by mutual written agreement or otherwise in accordance with the terms of this Agreement.

1.3 Conflicting Provisions/Order of Precedence. The Contract Documents are intended to be complementary and a requirement shown in one Contract Document is intended to be as binding as if included in all Contract Documents. In the event of any conflict or inconsistency between or among the Contract Documents, such conflict shall be resolved in accordance with the following order of precedence:

- (1) All written modifications and amendments to this Agreement;
- (2) This Agreement, exclusive of the Appendices;
- (3) Approved exceptions to RFP Documents as contained and identified in Design-Builder's Proposal (as negotiated with Owner);
- (4) RFP Documents
- (5) Construction Documents prepared and approved in accordance with [Section 3.3.6](#) of this Agreement;
- (6) Design-Builder's Proposal (as negotiated with Owner);
- (7) Design-Builder's Statement of Qualifications dated **Month XX, 2016**;
- (8) All other Appendices to this Agreement.

Either Party, upon becoming aware of any conflict or inconsistency between or among any of the Contract Documents, shall promptly notify the other Party in writing of such conflict or inconsistency, with the resolution of such conflict or inconsistency to be made by Owner and provided to Design-Builder in writing. If Design-Builder disagrees with Owner's means of resolution of a conflict or inconsistency, it shall have the right to proceed in accordance with the provisions of [Section 8.6](#).

1.4 Rules of Interpretation.

1.4.1 Terminology. Unless otherwise required by the context in which any term appears:

- (1) Capitalized terms used in this Agreement shall have the meanings specified in this Article or defined elsewhere in this Agreement.
- (2) The singular shall include the plural and the masculine shall include the feminine and neuter.
- (3) References in this Agreement to “Articles,” “Sections,” or “Appendices” shall be to articles, sections, or appendices of this Agreement, and references to paragraphs shall be to separate paragraphs of the section or subsection in which the reference occurs.
- (4) The words “herein,” “hereof,” “hereto” and “hereunder” shall refer to this Agreement as a whole and not to any particular section or subsection of this Agreement; the words “include,” “includes” or “including” shall mean “including, but not limited to.”
- (5) The term “day” shall mean calendar day, the term “month” shall mean a calendar month, and the term “year” shall mean a calendar year. The term “business day” shall mean a weekday on which commercial banks are commonly open in the location where the relevant: (a) payment of funds is to be received; (b) notice is to be received; or (c) performance is to be made; provided, that in the case of (c), if performance is to be made on the Site and if work is normally scheduled to be conducted at the Site on a weekend or holiday, then such day shall be considered a business day. Whenever an event is to be performed by a particular date, or a period ends on a particular date, and the date in question falls on a day that is not a business day, the event shall be performed, or the period shall end, on the next succeeding business day.
- (6) All accounting terms not specifically defined herein shall be construed in accordance with Generally Accepted Accounting Principles in the United States of America, consistently applied.
- (7) Use of the word “and” herein shall be construed in the conjunctive form and shall not be construed to mean “or.”
- (8) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings. Reference to standard specifications, manuals, or codes of any technical society, organization, or association, or to any governmental code, whether such reference be specific or by implication, shall be to the latest standard specification, manual, or code in effect on the date for submission of the Proposal, except as may be otherwise specifically stated. Wherever in the Contract Documents an article, device, or piece of equipment is referred to in the singular manner, such reference shall apply to as many such articles as are shown on the drawings, or required to complete the installation.

1.4.2 Headings. The titles of the articles and sections herein have been inserted as a matter of convenience of reference only, and shall not control or affect the meaning or construction of any of the terms or provisions hereof.

1.4.3 Joint Responsibility for Drafting. This Agreement was negotiated and prepared by both Parties with advice of counsel to the extent deemed necessary by each Party; the Parties have agreed to the wording of this Agreement; and none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

1.5 Definitions. For the purposes of the Contract Documents, the following words and terms shall have the meanings specified below:

1.5.1 Agreement. This executed Design-Build Contract between Owner and Design-Builder, as amended.

1.5.2 Agreement Date. The date first set forth in the Preamble to this Agreement.

1.5.3 Allowance Item. A stated requirement of the Contract Documents whereby a specified sum of money is incorporated, or allowed, into the Contract Sum at time of award in order to sustain the cost of a stipulated material, assembly, piece of equipment, or other part of the construction contract. This allowance may be used in cases where the particular item cannot be fully described in the Contract Documents.

1.5.4 Allowance Value. A stated reasonable estimate of cost to be applied to an Allowance Item.

1.5.5 Appendices. The documents identified as appendices in [Section 1.1](#).

1.5.6 Application for Final Payment. The Application for Payment submitted by Design-Builder after the Certificate of Final Acceptance has been issued and which meets all of the requirements set forth in [Section 6.5.1](#).

1.5.7 Application for Payment. A written request submitted by Design-Builder for payment of Work completed in accordance with the Contract Documents and approved Schedule of Values, supported by such substantiating data as Owner may require.

1.5.8 Certificate of Final Acceptance. Written certification by Owner that all conditions of Final Acceptance have been met.

1.5.9 Change of Law. Any of the following events, to the extent they materially increase Design-Builder's cost to perform the Work or materially adversely impacts Design-Builder's ability to achieve the Guaranteed Completion Date(s): (a) the enactment, adoption, promulgation, modification or repeal, after the Agreement Date, of any Governmental Rules; or (b) the imposition of any material condition on the issuance or renewal of any Governmental Approval after the Agreement Date; or (c) the failure to issue or renew any Governmental Approval; provided, however, that none of the following shall be a Change of Law: (i) any Governmental Rules issued, enacted, or adopted before the Agreement Date but which does not become effective until after the Agreement Date; (ii) the general requirements contained in any Governmental Approval at the time of application or issuance to comply with future laws, ordinances, codes, rules, regulations, or similar legislation; (iii) a change in applicable national or any other income or gross receipts tax law, enacted or effective after the Agreement Date; or any event identified in (a) through (c) above that was caused by Design-Builder's negligence, willful misconduct, or failure to comply with its obligations under this Agreement.

1.5.10 Change Order. A written order to Design-Builder signed by Owner and Design-Builder stating their agreement upon all of the following: (a) the scope of the change in the Work; (b) the amount of any adjustment to the Contract Sum; and (c) the extent of any adjustment to the Guaranteed Completion Date(s). A Change Order may authorize an addition, deletion, or revision in the Work, any change to the Contract Sum, and/or any adjustment to the Guaranteed Completion Date(s). Change Orders shall be considered to be a modification to this Agreement.

1.5.11 Change Order Proposal (COP). A written proposal submitted by the Design-Builder to the Owner proposing: (a) Scope definition and costs related to a change in the Work; (b) details regarding the development of costs proposed for any adjustment to the Contract Sum; and

(c) the extent of any adjustment to the Guaranteed Completion Date(s) as more fully defined in [Articles\(s\) 9 & 10](#).

1.5.12 Claim. Design-Builder's exclusive remedy for resolving disputes with Owner regarding the terms of a Change Order or a request for equitable adjustment, as more fully set forth in [Section 8.6](#) and [Article 11](#).

1.5.13 Construction Documents. Documents developed by Design-Builder pursuant to [Section 3.3.6](#) describing the requirements for construction of the Work.

1.5.14 Contingency. The financial sum set for in [Section 5.8.1.2](#) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents.

1.5.15 Contract Documents. This Design-Build Contract between Design-Builder and Owner and the Appendices referenced in [Section 1.1](#).

1.5.16 Contract Sum. The Guaranteed Maximum Price (GMP) payable to Design-Builder as set forth in [Section 5.1](#); as such amount may be adjusted pursuant to the terms of this Agreement.

1.5.17 Contract Time. The number of calendar days allotted in the Contract Documents for Design-Builder to achieve Substantial Completion of the Work.

1.5.18 Cost of the Work. Means those costs specified in [Section 5.5](#) that are reasonably and actually incurred by Design-Builder in the proper performance of the Work.

1.5.19 Days. Unless otherwise specified, day(s) shall mean calendar day(s).

1.5.20 Design-Builder. Party entering into this Agreement with Owner in which the Party agrees to both design and build the Work as specified in this Agreement.

1.5.21 Design Consultant. A qualified, licensed design professional who is not an employee of Design-Builder, but is retained by Design-Builder, or employed or retained by anyone under contract with Design-Builder or Subcontractor, to furnish design services required under the Contract Documents.

1.5.22 Design Work Product. All drawings, documents, specifications, and other documents and electronic data furnished by or through Design-Builder to Owner under this Agreement.

1.5.23 Environmental Law. Any environmental or health and safety-related Governmental Rule.

1.5.24 Equipment and Materials. All of the equipment, materials, machinery, apparatus, structures, supplies and other goods required by the terms of this Agreement to complete the Work and are incorporated into the Project.

1.5.25 Excusable Delay. Those events defined in [Section 10.7](#).

1.5.26 Fee. Design-Builder's Fee shall be the amount specified in [Section 5.4](#).

1.5.27 Field Authorization. A written directive from Owner to Design-Builder to proceed with changed Work when the processing time for an approved Change Order Proposal and Change Order would impact the Project.

1.5.28 Final Acceptance. The formal written acceptance issued to Design-Builder by Owner after Design-Builder has completed the requirements of the Contract Documents and achieved Final Completion as more fully set forth in [Section 7.4](#).

1.5.29 Final Completion. Satisfaction of the conditions set forth in [Section 7.4.1](#).

1.5.30 GMP Exhibit. All documents utilized to develop the Guaranteed Maximum Price Proposal ([Exhibit C – Schedule 5.8](#)).

1.5.31 GMP Proposal. The Guaranteed Maximum Price proposal set forth in Design-Builder's Base Contract Price Proposal Form (RFP Appendix, Section II) ([attached as Exhibit D – Schedule 5.8](#)).

1.5.32 Governmental Approvals. Any authorizations, consents, approvals, licenses, leases, rulings, permits, certifications, exemptions, or registrations by or with any Governmental Unit.

1.5.33 Governmental Rules. Any statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, directives, guidance documents, by-laws or requirements, or any similar form of decision of or determination by, or any interpretation or administration of any of the foregoing by, any Governmental Unit.

1.5.34 Governmental Unit. Any national, state or local government, any political subdivision thereof, or any governmental, quasi-governmental, judicial, public or statutory instrumentality, administrative agency, authority, body or other entity having jurisdiction over the performance of the Work, the Project or the Parties; provided, however, that the term "Governmental Unit" shall not be construed to include Owner.

1.5.35 Guaranteed Completion Date(s). The dates by which Design-Builder guarantees to achieve Substantial Completion and Final Completion, pursuant to [Section 7.2](#).

1.5.36 Guaranteed Maximum Price or GMP. The sum specified in [Section 5.1](#), which shall be paid to Design-Builder in accordance with [Article 6](#) and shall be complete compensation for all Work to be performed by Design-Builder under the Contract Documents, subject to increases or decreases by Change Order only as specifically provided in this Agreement.

1.5.37 Hazardous Materials. Any hazardous or toxic substance or hazardous or toxic waste, contaminant, or pollutant as defined in or regulated by applicable Environmental Law.

1.5.38 LEED. Leadership in Energy and Environmental Design.

1.5.39 Liquidated Damages. Delay damages payable to Owner pursuant to [Section 7.5](#).

1.5.40 Notice. A written notice delivered to the designated representative of the applicable Party (e.g., Owner's Representative and Design-Builder's Project Manager).

1.5.41 Notice to Proceed. Formal written notice that defines the date on which the Contract Time begins to run provided by Owner to Design-Builder pursuant to [Section 7.1](#).

1.5.42 Notice to Proceed Date. The date that Design-Builder receives the Notice to Proceed.

1.5.43 Owner. State of Washington Department of Enterprise Services and Clover Park Technical College.

1.5.44 Owner's Design-Build Consultant. The firm engaged by Owner and identified to Design-Builder in accordance with [Section 2.4](#).

1.5.45 Owner's Representative. The individual designated by Owner pursuant to [Section 2.1.2](#), who shall have the responsibility and authority specifically delegated to such individual by Owner and made known in writing to Design-Builder.

1.5.46 Owner's Separate Contractors. Those contractors identified in [Section 2.3](#).

1.5.47 Party. Owner or Design-Builder.

1.5.48 Parties. Owner and Design-Builder.

1.5.49 Prior Occupancy. Owner's use of all or parts of the Project before Substantial Completion as more fully described in [Section 7.3.4](#).

1.5.50 Project. The Center for Advanced Manufacturing Technologies Project, located at Clover Park Technical College in Lakewood, Washington.

1.5.51 Project Manager. The Project Manager designated by Design-Builder and made known in writing to Owner, who shall be authorized to act on behalf of Design-Builder as more fully set forth in [Section 3.2](#).

1.5.52 Project Schedule. The specified Critical Path Method (CPM) schedule identified in [Section 25.1](#), updated pursuant to [Section 25.2](#).

1.5.53 Proposal. Design-Builder's response to the RFP.

1.5.54 Punchlist. The list of Work, submitted by Design-Builder and approved by Owner, which remains to be completed after Substantial Completion, and updated thereafter as herein provided, which shall be only those items of Work: (a) that do not preclude the Project from operating or functioning as it was designed and intended to operate; (b) the absence of which does not create any occupational hazard or hazard to the Work; and (c) the completion of which will not unreasonably interrupt or interfere with Owner's ability to conduct its operations.

1.5.55 Request for Proposal (RFP). The Design-Build Request for Proposal for Center for Advanced Manufacturing Technologies at Clover Park Technical College dated September 15, 2016.

1.5.56 Retainage. Funds withheld by Owner pursuant to [RCW 60.28.011](#) and more fully described in [Section 6.4.2](#).

1.5.55 Savings. The difference between the sum of the Design-Builder's Cost of the Work and Fee (and, if applicable, any prices established under [Article 5](#)) and the GMP, as such GMP may have been adjusted over the course of the Project.

1.5.57 Schedule of Values. A written breakdown allocating the total Contract Sum to each principal category of work, in such detail as requested by Owner.

1.5.58 Scope Validation Period. The time period set forth in [Section 3.3.5.1](#).

1.5.60 Site. The location of the Project for construction and any adjacent occupation of property by the Design-Builder.

1.5.61 Subcontractor. Any person or entity, including any vendor or Design Consultant, with whom Design-Builder has entered into any subcontract to perform any part of the Work, and shall specifically include any person, entity, or subconsultant at any tier with whom any Subcontractor has further contracted any part of the Work.

1.5.62 Substantial Completion. The stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner fully can occupy the Work (or the designated portion thereof) for the use for which it is intended.

1.5.63 Value Engineering Change Proposal (“VECP”). A proposal developed and documented by Design-Builder which: (a) would modify or require a change in a requirement of any Contract Document; and (b) reduces the cost of the Project without impairing essential functions or characteristics of the facility (including service life, economy of operation, ease of maintenance, desirability and safety) as determined by Owner, in its sole discretion, and provided that it is not based solely upon a change in quantities.

1.5.64 Work. All administrative, design, procurement, supply, installation, construction, supervision, management, testing, labor, equipment and materials and other duties and services set forth in this Agreement and, to the extent not covered by this Agreement, in accordance with customarily accepted design, construction, and operations standards for governmental office facilities in the United States necessary to provide a complete, fully functional, and operational project.

ARTICLE 2: RESPONSIBILITIES OF OWNER

2.1 Owner’s Responsibilities. Owner shall be responsible for the following matters and actions:

2.1.1 Access to Site. Provide reasonable rights of ingress and egress to and from the Site for Design-Builder and all Subcontractors, subject to [Section 3.5.5](#) below. The Site shall be available to Design-Builder for all aspects of the Work on the Notice to Proceed Date.

2.1.2 Owner’s Representative. Designate, by written notice to Design-Builder on or before the Notice to Proceed, an Owner’s Representative, who shall be authorized to act on behalf of Owner, with whom Design-Builder may consult at all reasonable times, and whose written instructions, requests, and decisions will be binding upon Owner as to all matters pertaining to the Contract Documents and the performance of Owner hereunder.

2.1.3 Owner’s Governmental Approvals. Owner shall provide, or cause to be provided, reasonable cooperation and assistance to Design-Builder in obtaining Governmental Approvals for which Design-Builder is responsible. Owner’s reasonable cooperation and assistance to Design-Builder shall not relieve Design-Builder of its obligations to obtain the Governmental Approvals for which Design-Builder is responsible.

2.1.4 Relevant Information for Design-Builder. Provide, or cause to be provided, to Design-Builder information, within Owner’s possession or control, reasonably requested by Design-Builder to enable Design-Builder to fulfill its obligations pursuant to the Contract Documents.

2.1.5 Special Tests and Inspections. Perform, or cause to be performed, such tests and inspections and bear all related costs of tests, inspections, and Government Approvals as are required by Section 1704, Special Inspections, of the Washington State Building Code, provided, however, that Owner may charge Design-Builder any additional cost of inspection or testing

when the Work is not ready at the time specified by Design-Builder for inspection or testing, or when prior rejection makes reinspection or retest necessary.

2.1.6 Other Items of Owner Supply. Provide the other items of equipment, materials, and services specifically identified in the Contract Documents as being the responsibility of Owner.

2.1.7 Payment Obligations to Design-Builder. Pay to Design-Builder the Contract Sum pursuant to the terms of this Agreement.

2.2 Hazardous Materials. Owner, shall not be responsible for the Hazardous Materials identified in [Section 3.7.4](#) below, as such Hazardous Materials are the responsibility of Design-Builder.

2.3 Owner's Separate Contractors. Owner is responsible for all work performed on the Project or at the Site by separate contractors under Owner's control. Owner contractually shall require its separate contractors to cooperate with, and coordinate their activities so as not to interfere with, Design-Builder in order to enable Design-Builder timely to complete the Work consistent with the Contract Documents.

2.4 Engagement of Owner's Design-Build Consultant. Owner may engage an Owner's Design-Build Consultant to perform some of Owner's duties described in the Contract Documents, in which case Owner shall cause Owner's Design-Build Consultant to perform such duties in accordance with the terms of the Contract Documents. Owner shall notify Design-Builder of: (a) the identity of Owner's Design-Build Consultant; (b) the name and title of the person who shall be authorized to act on behalf of Owner's Design-Build Consultant and serve as the primary contact between Design-Builder and Owner's Design-Build Consultant in connection with the Contract Documents; and (c) the duties to be performed by Owner's Design-Build Consultant. If Owner does not engage an Owner's Design-Build Consultant, or discharges Owner's Design-Build Consultant after written notification to Design-Builder, then all references herein to Owner's Design-Build Consultant shall be deemed to refer to Owner.

ARTICLE 3: RESPONSIBILITIES OF DESIGN-BUILDER

3.1 Design-Builder's General Obligations

3.1.1 Obligation to Perform the Work. Design-Builder shall fully perform all the Work in accordance with and subject to the terms and conditions of the Contract Documents.

3.1.2 Responsibility for Subcontractors, Etc. Design-Builder shall be responsible to Owner for all acts and omissions of Design-Builder, any Subcontractor, and their respective employees, agents and representatives.

3.1.3 Incorporation Into Subcontractor Contracts. Design-Builder shall incorporate all obligations and understandings of the Contract Documents into all subcontracts and require that such obligations and understandings flow down to all subcontracts of any tier.

3.2 Design-Builder's Representative and Key Personnel

3.2.1 Design-Builder's Representative. Design-Builder shall designate, by written notice to Owner on or before the Notice to Proceed, an individual ("Project Manager") who shall be authorized to act on behalf of Design-Builder, with whom Owner may consult at all reasonable times, who shall have full supervision over the completion of the Work, who shall be designated to act as the primary point of contact with Owner regarding all matters relating to the Work, and who shall have full authority to bind Design-Builder except to the extent such authority is limited as described in such notice. If the Project Manager's authority is limited, the notice will identify such persons within Design-Builder's organization who do have full authority to bind Design-Builder for all purposes under the Contract Documents. Design-Builder may, at any time by

written notice to Owner, change the persons, if any, previously identified as having authority beyond that of the Project Manager. Any changes in the Project Manager shall require Owner's prior written approval.

3.2.2 Project Management; Key Personnel. Design-Builder shall provide management for the Work in accordance with the organization chart set forth in [Exhibit A – Schedule 3.2.2](#). Design-Builder acknowledges the importance of its Design-Build Project Manager, Design Manager/Coordinator, Energy Performance / Sustainable Design Specialists, Lead Designer and Project Superintendent (collectively, "Key Personnel"). Except in the event that the Key Personnel individual is no longer employed (or otherwise under the direction and control) by the Design-Builder, none of the Key Personnel may be withdrawn from the Project without prior written approval of Owner. Design-Builder will provide Owner with at least thirty (30) days written notice of intent to withdraw any Key Personnel and shall provide Owner a copy of the resume of any proposed replacement Key Personnel for Owner's review and acceptance. Owner shall notify Design-Builder with seven (7) days of any objection to the proposed replacement. In the event a Key Personnel leaves the employment of the Design-Builder unexpectedly and without 30 days' notice, the Design-Builder immediately will notify Owner upon learning of the departure and will comply with the requirements of this section. Design-Builder shall remove or replace, or have removed or replaced, any personnel performing the Work if Owner has a reasonable objection to such person.

3.3 Design Services

3.3.1 General. Design-Builder has full responsibility for the design of the Project in accordance with the Contract Documents. Design-Builder shall, consistent with applicable state licensing laws, provide through qualified, licensed design professionals employed by Design-Builder, or procured from qualified, independently-licensed Design Consultants, those design services necessary for Design-Builder to perform and complete the Work consistent with the Contract Documents. Such design services include, without limitation, those architectural and engineering services required for the preparation of Construction Documents and any other design submittal required under the Contract Documents.

3.3.2 Licenses. Any design professional performing design, engineering, architecture, or landscape architecture services on the Project shall be appropriately licensed as required by the laws of the State of Washington.

3.3.3 Standard of Care. The standard of care for all design services performed by or through Design-Builder on the Project shall be the care and skill ordinarily used by members of the design profession on projects of similar size, nature and complexity, practicing under similar conditions at the same time and locality of the Project.

3.3.4 Design Consultants Not Third-Party Beneficiaries. No Design Consultant is intended to be, nor shall any Design Consultant be deemed to be, a third-party beneficiary of this Agreement. Owner is intended to be and shall be deemed a third-party beneficiary of all contracts between Design-Builder and any Design Consultant.

3.3.5 Scope Validation and Identification of Scope Issues

3.3.5.1 Scope Validation Period. During the ninety (90) day period following the Notice to Proceed ("Scope Validation Period"), Design-Builder thoroughly shall review and compare all of the then-existing Contract Documents, including the RFP and any incorporated documents and the Proposal, to verify and validate Design-Builder's proposed design concept and identify any errors, omissions, inconsistencies, constructability problems, Site conditions or any other defects or concerns of any kind

(collectively referred to as “Scope Issues”) that may affect Design-Builder’s ability to complete its proposed design concept within the Contract Sum and Guaranteed Completion Date(s). If Design-Builder finds any Scope Issues, it shall notify Owner in writing of such findings within the Scope Validation Period. Upon such notice, the Parties shall promptly meet and confer to discuss the resolution of such issues. If a Scope Issue could not have reasonably been identified by Design-Builder prior to the Agreement Date, and if resolution of the issue materially impacts Design-Builder’s price or time to perform the Work, Design-Builder shall be entitled to submit a request for Change Order, and Owner shall have the right to act upon such request, in accordance with [Article 8](#). Notwithstanding anything to the contrary in the Contract Documents or as a matter of law, Design-Builder shall have the burden of proving that the alleged Scope Issue could not have been reasonably identified prior to the Agreement Date and that such Scope Issue materially impacts its price or time to perform the Work.

3.3.5.2 Design-Builder’s Assumption of Risk of Scope Issues. The Parties acknowledge that the purpose of the Design Verification Period is to enable Design-Builder to identify those Scope Issues that could not reasonably be identified prior to the Agreement Date. Notwithstanding anything to the contrary in the Contract Documents, the Scope Validation Period has not been established for the purpose of enabling Design-Builder to offer Value Engineering Change Proposals, and the term “Scope Issue” is not to intended to include Value Engineering Change Proposals. Value Engineering Change Proposals are be offered and administered in accordance with [Article 26](#). By executing this Agreement, Design-Builder acknowledges that the Design Verification Period is a reasonable time to enable Design-Builder to identify Scope Issues that will materially impact Design-Builder’s price or time to perform the Work. Following completion of the Scope Validation Period, with the sole exception of those Scope Issues identified during the Scope Validation Period and identified to Owner in accordance with [Section 3.3.5.1](#), the Parties agree as follows:

- (1) Design-Builder shall assume and accept all risks, costs, and responsibilities of any Scope Issue arising from or relating to the Contract Documents, including but not limited to conflicts within or between the RFP Documents and Proposal;
- (2) Design-Builder shall be deemed to have warranted that the Contract Documents existing as of the end of the Scope Validation Period are sufficient to enable Design-Builder to complete the design and construction of the Project without any increase in the Contract Sum or extension to the Guaranteed Completion Date(s); and
- (3) Owner disclaims any responsibility for, and Design-Builder waives its right to seek any increase in the Contract Sum or extension to the Guaranteed Completion Date(s) for, any Scope Issue associated with any of the Contract Documents, including the RFP Documents.

3.3.6 Design Development Services

3.3.6.1 Interim Design Submissions. Design-Builder shall submit to Owner interim design submissions for the Work at **forty percent (40%), sixty-five percent (65%), and one hundred percent (100%) design completion**. On or about the time of the scheduled design submissions, Design-Builder and Owner shall meet and confer about the submissions, with Design-Builder identifying during such meetings, among other things, the evolution of the design and any significant changes or deviations from the Contract Documents, or, if applicable, previously submitted design submissions. Minutes of the meetings will be maintained by Design-Builder and provided to all attendees for review. Following the design review meeting, Owner shall review and approve the interim design

submissions in a time that is consistent with the turnaround times agreed upon by the Parties and set forth in the Project Schedule.

3.3.6.2 Construction Documents. Design-Builder shall submit to Owner Construction Documents setting forth in detail drawings, specifications, and such other materials describing the requirements for construction of the Work. The Construction Documents shall be consistent with the latest set of interim design submissions, as such submissions may have been modified in design review meetings. The Parties shall have design review meetings as needed to discuss, and Owner shall review and approve the Construction Documents in accordance with the procedures set forth [Section 3.3.6.1](#) above. Design-Builder shall proceed with procurement and construction in accordance with the approved Construction Documents for that portion of the Work covered by the Construction Documents. Three (3) sets of approved Construction Documents shall be submitted to Owner prior to commencement of procurement or construction.

3.3.6.3 Owner's Review. Owner's review and approval of interim design submissions and the Construction Documents are for the purpose of mutually establishing a conformed set of Construction Documents compatible with the requirements of the Work. Neither Owner's review nor approval of any interim design submissions and/or Construction Documents shall be deemed to transfer any design liability from Design-Builder to Owner, and Design-Builder shall remain responsible for meeting all obligations required under the Contract Documents.

3.3.6.4 Design-Builder's Ability to Proceed with Procurement and Construction. Subject to written agreement with Owner and to the extent not prohibited by the Contract Documents, Design-Builder may prepare design submittals and Construction Documents for a portion of the Work to permit procurement and construction to proceed on that portion of the Work prior to completion of the Construction Documents for the entire Work.

3.3.6.5 Electronic Files. All design submissions of Design-Builder shall be forwarded to Owner in electronic format pursuant to the requirements of the Contract Documents. Project drawings shall be developed in CAD format, conforming to Owner's CAD standards. Specifications shall conform to Owner's Master Specifications and programming shall conform to Owner's Programming and Documentations Standards.

3.4 Site Conditions

3.4.1 Inspection of Site Conditions Prior to Agreement Date. Design-Builder has, as of the Agreement Date, ascertained the nature and location of the Work, the character and accessibility of the Site, the existence of obstacles to construction, the availability of facilities and utilities, the location and character of existing or adjacent work or structures, the surface and subsurface ground and soil conditions, and other general and local conditions (including labor) which might affect its performance of the Work or the cost thereof.

3.4.2 Inspection of Site Conditions After the Notice to Proceed. Design-Builder will, after the Notice to Proceed, undertake such testing, inspections and investigations as may be necessary to perform its obligations under the Contract Documents, including additional geotechnical evaluations. If Design-Builder intends to conduct additional geotechnical evaluations to supplement or corroborate the information contained in the RFP Documents, it shall do so during the Scope Validation Period. Any Scope Issues that arise from such evaluations shall be treated in the manner set forth in [Section 3.3.5](#) above. All reports or analyses generated by Design-Builder's testing, inspections and investigations, including

additional geotechnical testing, shall be furnished to Owner promptly after such reports or analyses are generated.

3.4.3 Differing Site Conditions. If Design-Builder encounters subsurface or otherwise concealed physical conditions at the Site which differ materially from those indicated (as such conditions may be further described through reports or analyses undertaken during the Design Verification Period), or unknown physical conditions of an unusual nature which differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, then Design-Builder shall give written notice to Owner promptly and in no event later than seven (7) days after the first observance of the conditions. Conditions shall not be disturbed prior to such notice. If such conditions differ materially and cause a change in Design-Builder's cost of, or time required for, performance of any part of the Work, Design-Builder may be entitled to an equitable adjustment in the Guaranteed Completion Date(s) or Contract Sum, or both, provided it makes a request therefor as provided in [Section 8.6](#).

3.5 Construction-Related Services. Except as otherwise expressly set forth in the Contract Documents, Design-Builder shall provide the equipment and materials, personnel and supervision, tools, equipment and materials and the services required, and shall be responsible for completing the Work in accordance with the terms of the Contract Documents. In furtherance of the foregoing (and not as a limitation thereof), Design-Builder shall:

3.5.1 Handling of Equipment and Materials, Etc. Provide for the handling of equipment and materials and construction equipment and materials, including, as necessary, inspection, expediting, shipping, unloading, receiving, customs clearance and transportation to the Site and storage until Substantial Completion, provided, however, that such responsibility shall continue after Substantial Completion as required for Design-Builder to perform its Punchlist and warranty obligations.

3.5.2 Quality of Equipment and Materials, Etc. Ensure that all equipment and materials incorporated into the Work shall be new (unless otherwise agreed by Design-Builder and Owner), of the most suitable grade for the purpose intended, and shall meet the requirements of the Contract Documents and all applicable Governmental Approvals. References in the RFP Documents to equipment and materials, articles or patented processes by trade name, make or catalog number, shall be regarded as establishing a standard of quality expected by Owner. Design-Builder may use equipment and materials, articles, or patented processes that are equal to those named in the RFP Documents, subject to the prior written approval of Owner, which approval shall not be unreasonably withheld. Design-Builder shall use equipment and materials for which spare parts or replacements (or reasonable substitutes) are commercially available and obtainable under normal circumstances without undue delay or difficulty.

3.5.3 Construction Means, Methods, Etc. Be solely responsible for all construction means, methods, techniques, sequences, procedures, safety and security programs in connection with the performance of the Work, irrespective of approval or consent of Owner's Representative, and take full responsibility for the adequacy, stability and safety of all Site operations.

3.5.4 Care, Custody and Control/Risk of Loss of Design-Builder. Have full responsibility for care, custody, and control of the Work (including all equipment and materials in connection therewith, whether incorporated therein or located on or off the Site) and bear the risk of loss of the Work in each case until Substantial Completion.

3.5.5 Site Security. Procure, supervise, and provide the security measures at the Site set forth in the Contract Documents.

3.5.6 Construction Utilities and Facilities at Site. Provide, or cause to be provided, power, communication system, water (including potable water), waste water lines and sewer lines required for the performance of the Work and provide, within the Site, temporary roads, office furniture, telephone facilities, secretarial services, drinking water and sanitary facilities to be used by Design-Builder and/or Subcontractors in the performance of the Work. Such obligations shall include obtaining and registering all required easements and obtaining all required Governmental Approvals for power lines, telephone lines, gas lines, waste water lines, sewer lines and lines for other utilities, whether on or off the Site. Design-Builder also shall install and maintain all meters required to measure the amount of each activity used for the purpose of determining charges. Prior to the date of Final Acceptance, Design-Builder shall remove all temporary connections, distribution lines, meters, and associated equipment and materials.

3.5.7 Maintenance of Site. Keep the Site free on a daily basis from accumulation of waste materials, rubbish, and other debris resulting from performance of the Work by depositing same in waste receptacles furnished by Design-Builder, which receptacles shall be removed and replaced on an as-needed basis. Design-Builder shall make special provisions, in accordance with applicable Governmental Rules, for storing and removing any Hazardous Materials waste generated during construction. Within thirty (30) days after the date of Substantial Completion, Design-Builder shall remove from the Site, in conformity with applicable Governmental Rules, all such waste materials, rubbish and other debris, as well as all tools, construction equipment and materials, machinery and surplus material (other than surplus material acquired by Owner and other than materials, tools and construction equipment necessary to complete Punchlist items). Before Final Completion, after completion of the Punchlist items, Design-Builder shall remove all remaining waste and rubbish generated during performance of Punchlist work, and all remaining materials, tools and construction equipment, and leave the Site in neat, clean and usable condition. If Design-Builder fails to clean up as provided herein, and after reasonable notice from Owner, Owner may do so and the cost thereof shall be charged to Design-Builder.

3.5.8 Access to Work and Notification of Excavation. Design-Builder shall provide Owner, Owner's Design-Build Consultant, and Owner's Representative access to the Work in progress wherever located. Before commencing any excavation, Design-Builder shall notify Owner and shall provide notice of the scheduled commencement of excavation to all Owners of underground facilities or utilities, through locator services. The term "excavation" for purposes of the preceding sentence means an operation in which earth, rock, or other material on or below the ground is moved or otherwise displaced by any means, except the tilling of soil less than twelve (12) inches in depth for landscape purposes.

3.5.9 Protection of Existing Structures, Equipment, Vegetation, Etc. Design-Builder shall protect from damage all existing structures, equipment, improvements, utilities, and vegetation at or near the Site. Design-Builder shall only remove trees when specifically authorized to do so, and shall protect vegetation that will remain in place. Design-Builder shall repair any damage, including that to the property of a third-party, resulting from failure to comply with the requirements of the Contract Documents or failure to exercise reasonable care in performing the Work. If Design-Builder fails or refuses to repair the damage promptly, Owner may have the necessary work performed and charge the cost to Design-Builder.

3.5.10 Cooperation with Owner's Separate Contractors. Reasonably cooperate with Owner's Separate Contractors and carefully adapt scheduling and performance of the Work in accordance with these Contract Documents to reasonably accommodate the work performed by Owner's Separate Contractors.

3.5.11 Maintaining Documents at Site. Keep on the Site a copy of all Contract Documents, reviewed shop drawings, Governmental Approvals, and any other document in the control of Design-Builder that pertains to the Project.

3.5.12 Testing and Inspections. Except for those tests, inspections, and Governmental Approvals set forth in [Section 2.1.5](#) above, make arrangements for all such tests, inspections, and Government Approvals as are necessary or required to ensure that the Work conforms to the requirements of the Contract Documents, with the testing agency designated by the Owner, or with the appropriate Governmental Unit. Design-Builder shall: (a) give Owner timely notice of when and where tests and inspections are to be made; and (b) maintain complete inspection records and make them available to Owner.

3.6 Responsibility for Health, Safety and First Aid

3.6.1 Responsibility for Safety. Design-Builder shall be fully responsible for the safety (the term “safety” as used in this [Section 3.6](#) being deemed to include working conditions that either are free from known health hazards or provide safeguards against such health hazards) of all persons employed by Design-Builder, Subcontractors, their agents or invitees, or any other person who enters the Site for any purposes relating to Design-Builder’s performance of its obligations under the Contract Documents. Design-Builder shall have the right to refuse entry onto the Site by, or to direct removal from the Site of, any employees, agents or invitees of Owner or Owner’s Design-Build Consultant who fail to comply with Design-Builder’s safety requirements at the Site. Design-Builder promptly shall notify Owner of any incidents in which such refusal or removal occurs.

3.6.2 Compliance with Safety and Health Rules. Design-Builder shall take all measures to ensure that the employees, agents and invitees of itself and all Subcontractors, while engaged in the Work comply with and adhere to: (a) all applicable Governmental Rules, including those promulgated by Washington Industrial Safety and Health Act (WISHA), relating to safety and health; and (b) Design-Builder’s accident prevention program and safety procedures and rules for the Work. For these purposes, Design-Builder shall:

- (1) Follow WISHA regional directives and provide safety programs that will require an accident prevention and hazard analysis plan for Design-Builder and each Subcontractor on the Site. Design-Builder shall submit a Site-specific safety plan to Owner’s Representative within ten (10) days of the Notice to Proceed and prior to conducting any Work at the Site.
- (2) Provide adequate safety devices and measures including but not limited to, the appropriate safety literature, notice, training, permits, placement and use of barricades, signs, signal lights, ladders, scaffolding, staging, runways, hoist, construction elevators, shoring, temporary lighting, grounded outlets, wiring, hazardous materials, vehicles, construction processes, and equipment required by [RCW 19.27](#), State Building Code (International Building, Electrical, Mechanical, Fire, and Plumbing Codes); [212-12 WAC](#), Fire Marshal Standards; [RCW 49.17](#), WISHA; [296-155 WAC](#), Safety Standards for Construction Work; [296-65 WAC](#), WISHA Asbestos Standard; [296-842 WAC](#), Respirators; [WAC 296-62](#), General Occupation Health Standards; [296-24 WAC](#), General Safety and Health Standards [RCW 49.70](#), and Right to Know Act.
- (3) Post all Governmental Approvals in a conspicuous location at the Site.
- (4) Provide any additional measures that Owner determines to be reasonable and necessary for ensuring a safe environment in areas open to the public; provided, however, that nothing in this Agreement shall be construed as imposing a duty upon Owner to prescribe safety conditions relating to employees, general public, or agents of Design-Builder, or as constituting any express or implied assumption of control or responsibility over project site safety.

3.6.3 Restriction to Site. Design-Builder shall confine to the Site the activities of its employees, agents and invitees, and those employees, agents and invitees of all Subcontractors and prohibit such personnel from entering upon any other properties or facilities of Owner except as specifically authorized by Owner's Representative.

3.6.4 Preventative Measures. Design-Builder shall take all reasonable measures to prevent injury to persons or damage to any property on the Site, or in the vicinity thereof, as a result of Design-Builder's or Subcontractors' performance of the Work, whether or not a hazardous or potentially hazardous condition exists due to the prosecution of the Work or due to work or activities being performed by Owner or others. Such reasonable measures shall include: (a) prevention of fires; (b) furnishing of temporary construction fences, flagmen, warning signs, and barricades; (c) elimination of excessive dust or smoke emission; (d) protection of overhead utility lines, underground pipes, conduit, or cables; and (e) protection of existing Work or work in progress by Owner or others.

3.6.5 First Aid. Design-Builder shall make its own arrangements to supply first aid to anyone who may be injured in connection with the Work.

3.6.6 Safety Coordinator. Design-Builder shall designate a Safety Coordinator at the Site, which individual shall be designated in the organizational chart set forth in [Exhibit A – Schedule 3.2.2](#). The Safety Coordinator shall be on the Site at all times that any Work is being performed and shall have no additional responsibilities other than safety. The Safety Coordinator shall be responsible for safe working conditions and compliance with all applicable Governmental Rules relating to safety and health.

3.6.7 Breach of Safety Obligations. Failure of Design-Builder to perform the obligations set forth in this [Section 3.6](#) may be deemed by Owner to constitute a material default under [Section 15.1.6](#).

3.7 Hazardous Materials

3.7.1 Design-Builder's Responsibilities. Design-Builder's responsibility for Hazardous Materials shall include the following duties:

- (1) Design-Builder is responsible for the abatement of the hazardous materials identified in the RFP Documents that exist in Building 22 prior to its demolition.
- (2) Design-Builder shall not keep, use, dispose, transport, generate, or sell on or about the Site any Hazardous Materials, and in no case shall any Hazardous Material be stored more than ninety (90) days on the Site;
- (3) Design-Builder shall exclude the use of lead paint and minimize the use of acetone and chlorinated substances at the Site; and
- (4) Design-Builder promptly shall notify Owner of: (a) all spills or releases of Hazardous Materials; (b) any failure to comply with Environmental Law or Governmental Rules applicable to Hazardous Materials; (c) all inspections of the Site by any Governmental Unit relative to Hazardous Materials; (d) any and all fines imposed by Governmental Units relative to Hazardous Materials; and (e) all responses or interim cleanup actions taken by or proposed to be taken by any Governmental Unit or private entity on the Site.

3.7.2 Information and Training. Design-Builder shall provide all persons working on the Site with information and training on Hazardous Materials in their work at the time of their initial assignment, and whenever a new Hazardous Material is introduced into their work area.

3.7.2.1 Information. At a minimum, Design-Builder shall inform persons working on the Site of:

- (1) The requirements of 296-62 WAC, General Occupational Health Standards;
- (2) Any operations in their work area where Hazardous Materials are present; and
- (3) The location and availability of written hazard communication programs, including the required list(s) of hazardous chemicals and material safety data sheets required by 296-62 WAC.

3.7.2.2 Training. At a minimum, Design-Builder shall provide training for persons working on the Site which includes:

- (1) Methods and observations that may be used to detect the presence or release of a Hazardous Material in the work area (such as monitoring conducted by the employer, continuous monitoring devices, visual appearance or odor of hazardous chemicals when being released, etc.);
- (2) The physical and health hazards of the chemicals in the work area;
- (3) The measures such persons can take to protect themselves from these hazards, including specific procedures Design-Builder or Subcontractors, or others have implemented to protect those on the Site from exposure to Hazardous Materials, such as appropriate work practices, emergency procedures, and personal protective equipment to be used; and
- (4) The details of the hazard communications program developed by Design-Builder, or Subcontractors, including an explanation of the labeling system and the material safety data sheet, and how employees can obtain and use the appropriate hazard information.

3.7.3 Discovery of Hazardous Materials. If Design-Builder encounters any Hazardous Material in or on the Site not already identified by the AHERA Survey provided in the RFP Documents which creates an imminent or substantial safety or health hazard for Owner, Design-Builder, any Subcontractor or their employees, agents or representatives, or the general public or the surrounding environment, Design-Builder shall suspend the performance of the Work to the extent required to avoid any such safety or health hazard until action sufficient to protect the interests of such parties is taken. Design-Builder shall notify Owner immediately upon encountering any Hazardous Materials in or on the Site, and shall thereafter follow the directions of Owner.

3.7.4 Design-Builder Liability. Notwithstanding anything to the contrary in the Contract Documents, Design-Builder shall be responsible, at its sole cost and expense, for the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to any Hazardous Materials present at, on, in or under, or migrating and/or emanating to or from the Site, that: (a) were brought or caused to be brought on the Site by any act or omission of Design-Builder or any Subcontractor pursuant to the performance of the Work; (b) were handled, treated or stored at the Site by Design-Builder or any Subcontractor in violation of any applicable Governmental Rule; or (c) were the result of any negligent, willful, or unlawful act or omission of Design-Builder or any Subcontractor. Owner shall have the sole discretion to approve the action, if any, to be taken by Design-Builder with respect to the handling, treatment, storage, removal, remediation, avoidance, or other appropriate action (if any), with respect to any such Hazardous Materials.

3.8 Labor

3.8.1 Labor Relations Generally. Design-Builder shall use reasonable efforts in the selection and continuing employment of labor and Subcontractors (whether directly or indirectly employed) so as to cause no conflict or interference with or between the various trades, or delay in performance of Design-Builder's obligations. Design-Builder shall be responsible for all labor relations matters relating to the Work and shall at all times use reasonable efforts to maintain harmony among unions and other personnel employed in connection therewith. Design-Builder shall coordinate all Work and the trades of all labor. Design-Builder shall at all times use its best efforts and judgment as an experienced Design-Builder to adopt and implement policies and practices designed to avoid work stoppages, slowdowns, disputes and strikes. Design-Builder shall be solely responsible for any work stoppages, slowdowns, disputes and/or strikes at the Site and such shall not be deemed an Excusable Delay or entitle Design-Builder to a Change Order or an extension of the Guaranteed Completion Date(s), except as specifically provided in [Section 10.7\(12\)](#).

3.8.2 Hours of Labor. Design-Builder shall comply with all applicable provisions of [RCW 49.28](#).

3.8.3 Notice to Owner of Labor Disputes. If Design-Builder has knowledge that any actual or potential labor dispute is delaying or threatens to delay timely performance in accordance with the Contract Documents, Design-Builder immediately shall give notice, including all relevant information, to Owner.

3.9 Subcontractors

3.9.1 Responsibility. Design-Builder shall use Subcontractors who are experienced and qualified, and meet the requirements of the Contract Documents. Design-Builder shall schedule, supervise, and coordinate the operations of all Subcontractors. No subcontracting of any of the Work shall relieve Design-Builder from its responsibility for the performance of the Work in accordance with the Contract Documents.

3.9.2 Subcontract Requirements. By written agreement, Design-Builder shall require each Subcontractor, so far as applicable to the Work to be performed by the Subcontractor, to be bound to Design-Builder by terms of the Contract Documents. Each subcontract shall preserve and protect the rights of Owner in accordance with the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights. Each subcontract also shall provide for an assignment by Design-Builder to Owner, provided that:

- (1) The assignment is effective only after termination by Owner for default pursuant to [Article 15](#) and only for those subcontracts which Owner accepts by notifying the Subcontractor in writing; and
- (2) After the assignment is effective, Owner will assume all future duties and obligations toward the Subcontractor which Design-Builder assumed in the subcontract.
- (3) The assignment is subject to the prior rights of the surety, if any, obligated under any bond provided in accordance with the Contract Documents.
- (4) As to Design Consultants, Design-Builder shall ensure that the contracts of all Design Consultants of any tier are subject to the right of Owner to receive an assignment of such contract, regardless of who is in privity of contract with such Design Consultant.

3.9.3 Subcontractor Identification. Before submitting the first Application for Payment, Design-Builder shall furnish in writing to Owner on Owner-provided form(s) the names, addresses, telephone numbers, and Tax Identification Numbers (TIN) of all Subcontractors,

except those supplying materials with a value of less than \$2,500, under contract with Design-Builder at such time. Design-Builder shall supplement such form(s) on a monthly basis for those Subcontractors (except those supplying materials with a value of less than \$2,500) who are contracted with Design-Builder after the first Application for Payment. Design-Builder shall designate all Subcontractors which they believe to be, or who have identified themselves to Design-Builder as, MBE, WBE, or Washington State OMWBE certified. Design-Builder shall indicate the anticipated dollar value of each MBE, WBE or OMWBE subcontract. Design-Builder shall not use any Subcontractor to whom Owner has a reasonable objection, and shall obtain Owner's written consent before making any substitutions or additions to Subcontractors previously identified to Owner.

3.10 Governmental Rules and Governmental Approvals

3.10.1 Governmental Rules. Subject to the terms and conditions of the Contract Documents, Design-Builder shall comply and shall cause all Subcontractors, employees, agents and representatives to comply with all applicable Governmental Rules in connection with the performance of Design-Builder's obligations under the Contract Documents. Design-Builder agrees to indemnify, defend, and hold Owner harmless from and against all fines, penalties, related costs and expenses attributable to any failure of Design-Builder or any Subcontractors, employees, agents or representatives, to comply with such Governmental Rules in connection with the performance of Design-Builder's obligations under the Contract Documents and to take all reasonable actions to enforce compliance with this provision.

3.10.2 Governmental Approvals. Except for those Governmental Approvals specifically identified in [Section 2.1.3](#) as being Owner's responsibility, Design-Builder shall pay for and obtain all Governmental Approvals required to perform the Work in accordance with the Contract Documents. Design-Builder shall submit copies of each Governmental Approval to Owner's Representative and shall post Governmental Approvals at the Site, as required by Governmental Rules. Prior to Final Acceptance, the approved, signed Governmental Approvals shall be delivered to Owner.

3.11 Assistance to Owner. Provide to Owner information reasonably requested by Owner to enable it to fulfill its obligations under the Contract Documents. This obligation shall include providing such assistance as is reasonably requested by Owner in dealing with any Governmental Unit in matters relating to the Work and the Project.

3.12 LEED Energy & Sustainability Performance Requirements.

- (1) LEED-v4 **Silver** Rating Required
- (2) Energy Performance goal of **30% better than ASHRAE 90.1 (2007 Edition)**
- (3) **Exceed ASHRAE Standard 55-2004: IEQ Prerequisite for Minimum Indoor Air Quality Performance**

Design-Builder shall maintain the LEED rating checklist throughout the design-build process and provide all the LEED consulting services required to obtain the targeted LEED rating. The Design-Builder shall submit and coordinate all documentation on LEED to the USGBC for the Project.

3.13 Design-Builder's Performance and Payment Bonds. Concurrently with execution of this Agreement, Design-Builder shall provide Owner the following Surety Bonds: (1) performance bond, and (2) payment bond. The performance and payment bonds shall use the AIA Document A312 form and the principal amount of each bond shall be one hundred percent (100%) of the Contract Sum plus Sales Tax. Bonds shall be duly executed by a responsible corporate surety (a) licensed as a surety and qualified to do business in the State of Washington; (b) in good standing on the list maintained by the United States Department of Treasury; and (c) having an A.M. Best rating of "A" or better. The costs for such bonds are included in the Contract Sum.

ARTICLE 4: DESIGN-BUILDER'S REPRESENTATIONS AND WARRANTIES; LICENSES

4.1 Representations and Warranties of Design-Builder. Design-Builder makes the following representations and warranties to Owner, each of which is true and correct as of the Agreement Date:

4.1.1 Due Organization, Power and Authority. Design-Builder is a corporation duly organized, existing, and in good standing in the State of Washington. Design-Builder possesses all requisite power and authority to enter into and perform this Agreement. Design-Builder has all legal power and authority to own and use its properties and to transact the business in which it is engaged and holds or expects to obtain in a timely manner all material franchises, licenses, and permits required therefor.

4.1.2 Binding Obligation. Design-Builder's execution, delivery, and performance of this Agreement have been duly authorized by, and are in accordance with, its articles of incorporation and by-laws; this Agreement has been duly executed and delivered for it by the signatories so authorized; and this Agreement constitutes Design-Builder's legal, valid, and binding obligation.

4.1.3 No Existing Breach or Default. Design-Builder is not currently in breach of, in default under, or in violation of, and the execution and delivery of this Agreement and the performance of its obligations hereunder will not constitute or result in any breach of, default under or violation of, any applicable Governmental Rules of any Governmental Unit, or the provisions of Design-Builder's articles of incorporation or by-laws, or any franchise or license, or any provision of any indenture or any evidence of indebtedness or security therefor, lease, contract, license or other agreement by which it is bound, except for such breaches, defaults or violations as will not, either individually or in the aggregate, result in a material adverse effect on the ability of Design-Builder to perform its obligations hereunder.

4.1.4 No Pending Litigation, Etc. No suit, claim, action, arbitration, or legal, administrative or other proceeding is pending or, to the best knowledge of Design-Builder, threatened against Design-Builder that could affect the validity or enforceability of this Agreement, the ability of Design-Builder to fulfill its commitments hereunder in any material respect, or that would result in any material adverse change in the business or financial condition of Design-Builder; and

4.1.5 Design-Builder Qualified to Perform the Work. Design-Builder has full experience and proper qualifications to perform the Work and to construct the Project.

4.1.6 Evaluation of Conditions Affecting the Work. Design-Builder has carefully examined the RFP Documents, including any Addenda issued to such documents, and any and all conditions that could in any way affect its performance of the Work, including:

- (1) visiting the Site and becoming familiar with and satisfying itself as to the general, local, and Site conditions that may affect the cost, progress, or performance of the Work, including the impact to ingress and egress to the Site required by security measures at the Site;
- (2) becoming familiar with and satisfying itself as to all Governmental Rules that may affect the cost, progress, or performance of the Work; and
- (3) determining that the RFP Documents were sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work and sufficient to enable Design-Builder to commit to the Contract Sum and Guaranteed Completion Date(s).

By representing warranting that it has so evaluated the above-referenced conditions, Design-Builder confirms that the Contract Sum and its agreement to complete on or before the

Guaranteed Completion Date(s) assume the risk of any and all such conditions set forth above, and that it shall not make a request for a Change Order or equitable adjustment for such conditions, subject to Design-Builder's rights under [Section 3.3.5](#) above.

4.2 Licenses. Design-Builder shall be registered or licensed as required by Governmental Rule.

ARTICLE 5: CONTRACT SUM AND TAXES

5.1 Contract Sum. The Contract Sum shall be the Guaranteed Maximum Price of **Millions, thousands, hundreds and Dollars (\$XX,XXX,XXX)**, which shall be paid to Design-Builder in accordance with [Article 6](#). The Contract Sum shall be complete compensation for all Work to be performed by Design-Builder under the Contract Documents, and is subject to increases or decreases by Change Order only as specifically provided in this Agreement.

5.2 Taxes. The Contract Sum shall include all taxes imposed by law and properly chargeable to the Project, including: (a) withholding, payroll and any other employee-related taxes on employees of Design-Builder or Subcontractors; (b) taxes based on the income or revenues of Design-Builder or Subcontractors; (c) taxes related to construction consumables; and (d) taxes levied by any Governmental Unit upon the services and labor provided by Design-Builder in connection with the Work, including Washington State Business and Occupation Tax.

5.3 Washington State Sales Tax. Notwithstanding [Section 5.2](#) above, the Contract Sum does not include Washington State Sales Tax (WSST). Owner will include applicable WSST in progress payments, and Design-Builder shall pay the WSST to the Department of Revenue and shall furnish proof of payment to Owner upon Owner's request.

5.4 Design-Builder's Fee.

5.4.1 Design-Builder's Fee shall be: **(Number written out) percent (X.XX%)** of the Cost of the Work, as adjusted in accordance with [Section 5.4.2](#) below.

5.4.2 Design-Builder's Fee will be adjusted pursuant to [Article 9](#) for any changes in the Work.

5.5 Cost of the Work. The Cost of the Work shall include only the following:

5.5.1 Wages of direct employees of Design-Builder performing the Work at the Site or, with Owner's agreement, at locations off the Site; provided, however, that the costs for those employees of Design-Builder performing design services shall be those rates set forth in RFP Appendix, Section II, f. Price Proposal Cost Estimate.

5.5.2 Wages or salaries of Design-Builder's supervisory and administrative personnel engaged in the performance of the Work and who are located at the Site or working off-Site to assist in the production or transportation of material and equipment necessary for the Work.

5.5.3 Wages or salaries of Design-Builder's personnel stationed at Design-Builder's principal or branch offices, but only to the extent said personnel are identified in [Exhibit A – Schedule 3.2.2](#) and performing the function set forth in said exhibit. The reimbursable costs of personnel stationed at Design-Builder's principal or branch offices shall include a ten percent (10%) markup to compensate Design-Builder for the Project-related overhead associated with such personnel.

5.5.4 Costs incurred by Design-Builder for employee benefits, premiums, taxes, insurance, contributions and assessments required by law, collective bargaining agreements, or which are customarily paid by Design-Builder, to the extent such costs are based on wages and salaries paid to employees of Design-Builder covered under [Sections 5.5.1 through 5.5.3](#).

5.5.5 The reasonable portion of the cost of travel, accommodations and meals for Design-Builder's personnel necessarily and directly incurred in connection with the performance of the Work.

5.5.6 Payments properly made by Design-Builder to Subcontractors and Design Consultants for performance of portions of the Work, including any insurance and bond premiums incurred by Subcontractors and Design Consultants. All insurance and bond premiums are to be identified in [Exhibit B – Schedule 5.5.6](#) in order to be considered cost of the work.

5.5.7 Costs incurred by Design-Builder in repairing or correcting defective, damaged or nonconforming Work (including any warranty or corrective Work performed after Substantial Completion), provided that such Work was beyond the reasonable control of Design-Builder, or caused by the ordinary mistakes or inadvertence, and not the negligence, of Design-Builder or those working by or through Design-Builder.

5.5.8 Costs, including transportation, inspection, testing, storage and handling, of materials, equipment and supplies incorporated or reasonably used in completing the Work.

5.5.9 Costs (less salvage value) of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by the workers that are not fully consumed in the performance of the Work and which remain the property of Design-Builder, including the costs of transporting, inspecting, testing, handling, installing, maintaining, dismantling and removing such items.

5.5.10 Costs of removal of debris and waste from the Site.

5.5.11 The reasonable costs and expenses incurred in establishing, operating and demobilizing the Site office, including the cost of facsimile transmissions, long-distance telephone calls, postage and express delivery charges, telephone service, photocopying and reasonable petty cash expenses.

5.5.12 Rental charges and the costs of transportation, installation, minor repairs and replacements, dismantling and removal of temporary facilities, machinery, equipment and hand tools not customarily owned by the workers, which are provided by Design-Builder at the Site, whether rented from Design-Builder or others, and incurred in the performance of the Work.

5.5.13 Premiums for insurance and bonds required by this Agreement or the performance of the Work.

5.5.14 All fuel and utility costs incurred in the performance of the Work.

5.5.15 Sales, use or similar taxes, tariffs or duties incurred in the performance of the Work.

5.5.16 Legal costs, court costs and costs of mediation and arbitration reasonably arising from Design-Builder's performance of the Work, provided such costs do not arise from disputes between Owner and Design-Builder.

5.5.17 Costs for permits, royalties, licenses, tests and inspections incurred by Design-Builder as a requirement of the Contract Documents.

5.5.18 The cost of defending suits or claims for infringement of patent rights arising from the use of a particular design, process, or product required by Owner, paying legal judgments against Design-Builder resulting from such suits or claims, and paying settlements made with Owner's consent.

5.5.19 Deposits which are lost, except to the extent caused by Design-Builder's negligence.

5.5.20 Costs incurred in preventing damage, injury or loss in case of an emergency affecting the safety of persons and property.

5.5.21 Accounting and data processing costs related to the Work.

5.5.22 Other costs reasonably and properly incurred in the performance of the Work to the extent approved in writing by Owner (including 3% of direct labor for small tools).

5.5.23 Owner and Design-Builder agree that an escrow account in the amount of \$### (XXX number written out dollars) shall be established prior to Final Completion, which escrow shall be used to reimburse Design-Builder for the Costs of the Work incurred after Final Completion to perform warranty Work. The escrow agreement will provide that any sums not used at the expiration of the warranty period shall be returned to Owner, subject to any savings Design-Builder may be entitled to under this Agreement. In the event the escrow account is exhausted, but funds remain under the GMP, Owner shall be obligated to pay Design-Builder the Costs of the Work incurred after Final Completion to perform warranty Work up to the GMP.

5.6 Allowance Items and Allowance Values.

5.6.1 Any and all Allowance Items, as well as their corresponding Allowance Values, are set forth in the GMP Exhibit, which is included within the GMP.

5.6.2 Design-Builder and Owner have worked together to review the Allowance Items and Allowance Values based on design information then available to determine that the Allowance Values constitute reasonable estimates for the Allowance Items. Design-Builder and Owner will continue working closely together during the preparation of the design to develop Construction Documents consistent with the Allowance Values. Nothing herein is intended in any way to constitute a guarantee by Design-Builder that the Allowance Item in question can be performed for the Allowance Value.

5.6.3 No work shall be performed on any Allowance Item without Design-Builder first obtaining in writing advanced authorization to proceed from Owner. Owner agrees that if Design-Builder is not provided written authorization to proceed on an Allowance Item by the date set forth in the Project schedule, due to no fault of Design-Builder, Design-Builder may be entitled to an adjustment of the Contract Time(s) and Contract Sum.

5.6.4 The Allowance Value for an Allowance Item includes the direct cost of labor, materials, equipment, transportation, taxes and insurance associated with the applicable Allowance Item. All other costs, including design fees, Design-Builder's overall project management and general conditions costs, overhead and fee, are deemed to be included in the original Contract Sum, and are not subject to adjustment, regardless of the actual amount of the Allowance Item.

5.6.5 Whenever the actual costs for an Allowance Item is more than or less than the stated Allowance Value, the Contract Sum shall be adjusted accordingly by Change Order, subject to [Section 5.4](#). The amount of the Change Order shall reflect the difference between actual costs incurred by Design-Builder for the particular Allowance Item and the Allowance Value.

5.7 Non-Reimbursable Costs.

5.7.1 The following shall not be deemed as Cost of the Work:

5.7.1.1 Compensation for Design-Builder's personnel stationed at Design-Builder's principal or branch offices, except as provided for in [Sections 5.5](#).

5.7.1.2 Overhead and general expenses, except as provided for in [Section 5.5](#), or which may be recoverable for changes to the Work.

5.7.1.3 The cost of Design-Builder's capital used in the performance of the Work.

5.7.1.4 Any costs that would cause the Guaranteed Maximum Price, as adjusted in accordance with the Contract Documents, to be exceeded.

5.8 The Guaranteed Maximum Price ("GMP").

5.8.1 GMP Established Upon Execution of this Agreement.

5.8.1.1 Design-Builder represents, warrants, and guarantees that it shall not exceed the Guaranteed Maximum Price (GMP). Documents used as a basis for the GMP shall be identified in an exhibit to this Agreement ([Exhibit C – Schedule 5.8.1.1](#), "GMP Exhibit Documents"). Design-Builder does not guarantee any specific line item provided as part of the GMP, and has the sole discretion to apply payment due to overruns in one line item to savings due to underruns in any other line item. Design-Builder agrees, however, that it shall be responsible for paying all costs of completing the Work which exceed the GMP, as adjusted in accordance with the Contract Documents.

5.8.1.2 The GMP includes a Contingency in the amount of **XXX (written amount)** Dollars (\$###) which is available for Design-Builder's exclusive use for unanticipated costs it has incurred that are not the basis for a Change Order under the Contract Documents. By way of example, and not as a limitation, such costs may include: (a) trade buy-out differentials; (b) overtime or acceleration; (c) escalation of materials; (d) correction of defective, damaged or nonconforming Work, design errors or omissions, however caused; (e) Subcontractor defaults; or (f) those events under [Article 10](#) of this Agreement that result in an extension of the Contract Time but do not result in an increase in the Contract Sum. The Contingency is not available to Owner for any reason, including changes in scope or any other item which would enable Design-Builder to increase the GMP under the Contract Documents. Design-Builder shall provide Owner notice of all anticipated charges against the Contingency, and shall provide Owner as part of the monthly status report required by [Section 25.7](#) of the Contract an accounting of the Contingency, including all reasonably foreseen uses or potential uses of the Contingency in the upcoming three (3) months. Design-Builder agrees that with respect to any expenditure from the Contingency relating to a Subcontractor default or an event for which insurance or bond may provide reimbursement, Design-Builder will in good faith exercise reasonable steps to obtain performance from the Subcontractor and/or recovery from any surety or insurance company. Design-Builder agrees that if Design-Builder is subsequently reimbursed for said costs, then said recovery will be credited back to the Contingency.

5.8.2 GMP Adjustments.

5.8.2.1 Review and Adjustment to GMP Proposal. After submission of the GMP Proposal, Design-Builder and Owner shall meet to discuss and review the GMP Proposal. If Owner has any comments regarding the GMP Proposal, or finds any inconsistencies or inaccuracies in the information presented, it promptly shall give written notice to Design-Builder of such comments or findings. If appropriate, Design-Builder shall, upon receipt of Owner's notice, make appropriate adjustments to the GMP Proposal.

5.8.2.2 Acceptance of GMP Proposal. If Owner accepts the GMP Proposal, as may be amended by Design-Builder, the GMP and its basis shall be set forth in an amendment to this Agreement.

5.8.2.3 Failure to Accept the GMP Proposal. If Owner rejects the GMP Proposal, or fails to notify Design-Builder in writing on or before the date specified in the GMP Proposal that it accepts the GMP Proposal, the GMP Proposal shall be deemed

withdrawn and of no effect. In such event, Owner and Design-Builder shall meet and confer as to how the Project will proceed, with Owner having the following options:

5.8.2.3.1 Owner may suggest modifications to the GMP Proposal, whereupon, if such modifications are accepted in writing by Design-Builder, the GMP Proposal shall be deemed accepted and the Parties shall proceed in accordance with [Section 5.8.2.2](#); or

5.8.2.3.2 Owner may terminate this Agreement for convenience in accordance with [Article 16](#); provided, however, in this event, Design-Builder shall not be entitled to the payment provided for in [Article 16](#).

5.8.3 Savings. Savings shall be 100% returned to Owner.

ARTICLE 6: PAYMENT TERMS

6.1 Initial Invoice. Design-Builder shall be entitled to submit to Owner, on or after the Agreement Date, an initial invoice. This amount is considered part of the Contract Sum and shall be considered full and complete compensation to Design-Builder for the design services performed prior to the Agreement Date and furnished in the Proposal. Payment of the Initial invoice will be processed by Owner and paid in accordance with [Section 6.4](#) below, provided, however, that no retainage will be withheld on such payment.

6.2 Schedule of Values. Before submitting its first Application for Payment, Design-Builder shall submit to Owner for approval a Schedule of Values with breakdown allocating the total Contract Sum to each principle category of work, in such detail as requested by Owner and established by Section III, [Design-Build Contract Management, Z1010.01A](#) of the RFP Documents. The Schedule of Values will: (a) subdivide the Work into its respective parts; (b) include values for all items comprising the Work (inclusive of the Initial invoice payment amount); (c) contain appropriate amounts for demobilization, record drawings, and any other requirements for Project close-out; and (d) be used by Owner as the basis for progress payments. Payment for Work shall be made only for and in accordance with those items included in the Schedule of Values.

6.3 Applications for Payment

6.3.1 Form of Application. Design-Builder shall, on or before the twenty-fifth (25th) day of each month, submit to Owner an itemized Application for Payment, completed in accordance with the Contract Documents and the approved Schedule of Values. Each application shall be supported by such substantiating data as Owner may require. When Design-Builder submits its monthly Application for Payment, it shall include, in addition to other requirements of the Contract Documents the following: (a) a completed Affidavit of Amounts Paid Minority and Women's Business Enterprises (MBE/WBE) form and such other requirements as are identified in [Article 22](#); (b) a completed Statement of Apprentice/Journeyman Participation form and such other requirements as set forth in [Article 23](#); and (c) a waiver and release of claims and mechanic's liens. Payments will not be considered due and payable by Owner unless these forms are properly completed and timely received by Owner.

6.3.2 Certification. By submitting an Application for Payment, Design-Builder: (a) certifies that all Subcontractors have been paid, less earned retainage in accordance with [RCW 60.28.010](#), as their interests appeared in the last preceding Application for Payment, if payment for the application has been paid to the Design-Builder more than 10-days prior to the current application; and (b) recertifies that Design-Builder's prior certifications are true and correct, to the best of Design-Builder's knowledge, as of the date of the Application for Payment.

6.3.3 Reconciliation. At the time it submits an Application for Payment, Design-Builder shall analyze and reconcile, to the satisfaction of Owner, the actual progress of the Work with the Project Schedule.

6.3.4 Stored Materials. If authorized by Owner, the Application for Payment may include request for payment for material delivered to the Site and suitably stored, or for completed preparatory work. Payment may similarly be requested for material stored off Site, provided Design-Builder complies with or furnishes satisfactory evidence of the following:

- (1) The material will be placed in a warehouse that is structurally sound, dry, lighted and suitable for the materials to be stored;
- (2) The warehouse is located within a 10-mile radius of the Project. Other locations may be utilized, if approved in writing, by Owner;
- (3) Only materials for the Project are stored within the warehouse (or a secure portion of a warehouse set aside for the Project);
- (4) Design-Builder furnishes Owner a certificate of insurance extending Design-Builder's insurance coverage for damage, fire, and theft to cover the full value of all materials stored, or in transit;
- (5) The warehouse (or secure portion thereof) is continuously under lock and key, and only Design-Builder's authorized personnel shall have access;
- (6) Owner shall at all times have the right of access in company of Design-Builder;
- (7) Design-Builder and its surety assume total responsibility for the stored materials; and
- (8) Design-Builder furnishes to Owner certified lists of materials stored, bills of lading, invoices, and other information as may be required, and shall also furnish notice to Owner when materials are moved from storage to the Site.

6.4 Progress Payments

6.4.1 Payment. Owner shall make progress payments, in such amounts as Owner determines are properly due, within thirty (30) days after receipt of the Initial invoice or a properly executed Application for Payment. Owner shall notify Design-Builder in accordance with [RCW 39.76](#) if an Application for Payment does not comply with the requirements of the Contract Documents or if payment will be withheld.

6.4.2 Retainage. Owner shall retain five percent (5%) of the amount of each progress payment due under an Application for Payment until at least forty-five (45) days after Final Acceptance and receipt of all documents required by Governmental Rule or the Contract Documents, including, at Owner's request, consent of surety to release of the retainage; provided, however, that no amount shall be retained for those portions of the Contract Sum that are for professional design services. In accordance with [RCW 60.28](#), Design-Builder may request that monies reserved be retained in a fund by Owner, deposited by Owner in a bank or savings and loan, or placed in escrow with a bank or trust company to be converted into bonds and securities to be held in escrow with interest to be paid to Design-Builder. Owner may permit Design-Builder to provide an appropriate bond in lieu of the retained funds. Retainage shall be released in accordance with Governmental Rules.

6.4.3 Payment for Punchlist. Design-Builder's right to be paid for the Punchlist is set forth in [Section 7.3.2](#).

6.4.4 Title to Work Covered by Progress Payments. Title to all Work and materials covered by a progress payment shall pass to Owner at the time of such payment free and clear of all liens, claims, security interests, and encumbrances. Passage of title shall not, however, relieve

Design-Builder from any of its duties and responsibilities for the Work or materials, or waive any rights of Owner to insist on full compliance by Design-Builder with the Contract Documents.

6.5 Final Payment

6.5.1 Application for Final Payment. Once Owner has issued a Certificate of Final Acceptance, Design-Builder shall be entitled to submit an Application for Final Payment, which application will include the following information:

- (1) an affidavit that all payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which Owner might in any way be responsible have been paid or otherwise satisfied and that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, Equipment and Material, taxes, or other items performed, furnished or incurred for or in connection with the Work which will in any way affect Owner's interests;
- (2) a written notice of any outstanding disputes or claims between Design-Builder and any of its Subcontractors, including the amounts and other details thereof;
- (3) a general release executed by Design-Builder waiving, upon receipt of final payment by Design-Builder, all claims, except those claims pending in accordance with [Article 11](#);
- (4) consent of Design-Builder's surety to final payment;
- (5) certificates of insurance confirming that required coverages will remain in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to Owner, consistent with the requirements of the Contract Documents; and
- (6) a written statement that Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Contract Documents.

6.5.2 Payment. Within thirty (30) days after receipt of an acceptable Application for Final Payment, Owner shall pay to Design-Builder the unpaid balance of the Contract Sum (less any Retainage per [Article 6](#)), reduced by any amounts owed by Design-Builder to Owner pursuant to this Agreement which have not been paid by Design-Builder. Retainage funds shall be released pursuant to [RCW 60.28](#).

6.5.3 Continuing Obligations. Neither Final Acceptance nor final payment shall release Design-Builder or its sureties from any obligations of these Contract Documents, or any bonds, or constitute a waiver of any claims by Owner arising from Design-Builder's failure to perform the Work in accordance with the Contract Documents.

6.5.4 Waiver and Release. Acceptance of final payment by Design-Builder or any Subcontractor shall constitute a waiver and release to Owner of all claims by Design-Builder, or any such Subcontractor, for an increase in the Contract Sum or Guaranteed Completion Date(s), and for every act or omission of Owner relating to or arising out of the Work, except for those claims made in accordance with [Article 11](#).

6.6 Owner's Right to Withhold Payment and Offset

6.6.1 Withholding of Payment. Owner may withhold or, on account of subsequently discovered evidence, nullify the whole or part of any payment to such extent as may be necessary to protect Owner from loss or damage for reasons including:

- (1) Work not in accordance with the Contract Documents;

- (2) Reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- (3) Work by Owner to correct defective Work or to complete the Work;
- (4) Design-Builder's failure to perform in accordance with the Contract Documents; and
- (5) Costs, claims, or liability that are the result of Design-Builder's failure to perform in accordance with the Contract Documents, including Liquidated Damages.

6.6.2 Owner's Offset Rights. If, at the time any payment by Owner is due under this [Article 6](#), Design-Builder is liable to Owner for any amounts in accordance with the provisions of the Contract Documents (including Liquidated Damages), Owner may deduct the outstanding amount of such claims against Design-Builder from the amount payable to Design-Builder.

6.6.3 Payment Disputes. If Design-Builder disputes Owner's determination of payments due hereunder, or disputes any offsets or withholding by Owner, Design-Builder shall have the right to submit the dispute for resolution in accordance with [Article 11](#). Pending resolution of any such dispute, Design-Builder shall continue its performance of the Work in accordance with the Contract Documents. Amounts determined by such resolution process to have been properly due shall be payable by Owner within thirty (30) days after (a) the effective date of the Parties' negotiated settlement or (b) absent such settlement, the arbitration award issued pursuant to [Section 11.2](#).

6.7 Interest. Payments due and unpaid in accordance with the Contract Documents shall bear interest as specified in [RCW 39.76](#).

6.8 Record Keeping and Finance Controls. Design-Builder acknowledges that this Agreement is to be administered on an "open book" arrangement relative to Costs of the Work. Design-Builder shall keep full and detailed accounts and exercise such controls as may be necessary for proper financial management, using accounting and control systems in accordance with generally accepted accounting principles and as may be provided in the Contract Documents. During the performance of the Work and for a period of three (3) years after Final Payment, Owner and Owner's accountants shall be afforded access to, and the right to audit from time-to-time, upon reasonable notice, Design-Builder's records, books, correspondence, receipts, subcontracts, purchase orders, vouchers, memoranda and other data relating to the Work, all of which Design-Builder shall preserve for a period of three (3) years after Final Payment. Such inspection shall take place at Design-Builder's offices during normal business hours unless another location and time is agreed to by the parties. Any multipliers or markups agreed to by the Owner and Design-Builder as part of this Agreement are only subject to audit to confirm that such multiplier or markup has been charged in accordance with this Agreement, with the composition of such multiplier or markup not being subject to audit.

ARTICLE 7: Time for Performance

7.1 Commencement of Work. Design-Builder shall commence the Work upon its receipt of a written notice from Owner ("Notice to Proceed") authorizing Design-Builder to commence the Work, whereupon **Design-Builder shall diligently pursue performance of the Work in accordance with the Contract Documents.**

7.2 Guaranteed Completion Date(s).

7.2.1 Guaranteed Substantial Completion. Design-Builder guarantees that it will achieve Substantial Completion on or before 30 June 2019.

7.2.1.1 Guaranteed Equipment Relocation Completion. Design-Builder guarantees that it will achieve Completion of the equipment relocation on or before 1 September 2019 with all work required from the relocation of existing Owner-furnished Equipment from its

current location to the new CAMT including disconnection, preparation for moving, moving, reconnection and testing at the new CAMT

7.2.2 Guaranteed Final Completion. Design-Builder guarantees that it will achieve Final Completion within sixty (60) calendar days of Substantial Completion.

7.2.3 Adjustments to the Guaranteed Completion Date(s). The Guaranteed Completion Date(s) for Substantial Completion and Final Completion shall be subject to adjustment in accordance with [Articles 8 & 10](#).

7.2.4 Performance of the Work. Design-Builder represents that the Work shall be planned, organized and executed in accordance with the Project Schedule to achieve the Guaranteed Completion Date(s). Should Owner have a reasonable belief that the Project Schedule or Guaranteed Completion Date(s) will not be met for causes that do not constitute an Excusable Delay, Owner has the right, but not the obligation, to so notify Design-Builder, and Design-Builder shall then work additional overtime, engage additional personnel and take such other measures as necessary to complete the Work within the Project Schedule and by the Guaranteed Completion Date(s). Design-Builder shall bear all costs related to such overtime, additional personnel, and other measures.

7.3 Substantial Completion.

7.3.1 Conditions of Substantial Completion. Substantial Completion is the stage in the progress of the Work (or portion thereof designated and approved by Owner) when the construction is sufficiently complete, in accordance with the Contract Documents, so Owner can fully occupy the Work (or the designated portion thereof) for the use for which it is intended. All Work other than incidental corrective or Punchlist work shall be completed as of Substantial Completion, and Substantial Completion shall not have been achieved if: (a) any systems and parts are not functioning as required by the Contract Documents; (b) utilities are not connected and operating normally; (c) all required occupancy permits have not been issued; or (d) the Work is not accessible by normal vehicular and pedestrian traffic routes.

7.3.2 Punchlist.

7.3.2.1 Design-Builder's Creation of Punchlist. Design-Builder shall prepare a Punchlist and provide it to Owner together with an estimate of the cost and time to complete and/or correct each Punchlist item.

7.3.2.2 Owner's Action on Punchlist. Owner shall notify Design-Builder within ten (10) business days after receipt of the Punchlist that it accepts such Punchlist and estimate or shall otherwise state its reasons for disagreement therewith in reasonable detail; provided, however, that: (a) Owner shall have no obligation to accept such Punchlist if the aggregate value of the Work to be performed as described in the Punchlist (including labor and equipment) exceeds one half of one percent (0.5%) of the Contract Sum; and (b) acceptance or rejection thereof shall not relieve Design-Builder of its liability to complete or correct the Punchlist items. If the parties fail to agree on any aspect of the Punchlist, then: (a) Design-Builder shall be obligated to proceed in accordance with Owner's instructions and interpretations relative to the Punchlist; and (b) either Party may refer the matter to dispute resolution in accordance with the provisions of [Article 11](#).

7.3.2.3 Condition Precedent to Substantial Completion. Design-Builder's creation of a Punchlist, and Owner's Approval of such Punchlist, shall be a condition precedent to achieving Substantial Completion.

7.3.2.4 Payment of Punchlist Amount. Owner may withhold an amount equal to one hundred fifty percent (150%) of the estimated value of each Punchlist item. Payment of the estimated amount of the Punchlist shall not be due until Design-Builder has

completed all Punchlist items. If Design-Builder fails to complete all Punchlist items within sixty (60) days after the date of Substantial Completion, Owner may complete, or cause to be completed, any item which Design-Builder has so failed to complete. In such case, Owner may deduct the related cost of such item from the amount withheld with respect to such item and pay the remaining amount withheld, if any, to Design-Builder.

7.3.3 Substantial Completion Certificate

7.3.3.1 Design-Builder's Issuance of Certificate. When Design-Builder believes that Substantial Completion has occurred, it shall issue a Substantial Completion Certificate, supported by such information required by the Contract Documents.

7.3.3.2 Owner's Review of Certificate. Owner shall review and accept or reject the Substantial Completion Certificate issued by Design-Builder within ten (10) business days of its receipt of such certificate, and, if applicable, will specifically identify its reasons for rejection. If Design-Builder accepts the reasons for such rejection, it shall take corrective action and submit a new certificate to Owner. If Design-Builder disagrees with the reasons for the rejection, it shall promptly notify Owner, whereupon Design-Builder and Owner shall meet to attempt to resolve the disagreement. If the disagreement cannot be resolved within five (5) business days, Design-Builder shall act in accordance with the instructions of Owner without prejudice to its rights under [Article 11](#).

7.3.4 Prior Occupancy. Owner may, upon written notice thereof to Design-Builder, take possession of or use any completed or partially completed portion of the Work ("Prior Occupancy") at any time prior to Substantial Completion. Unless otherwise agreed in writing, Prior Occupancy shall not: (a) be deemed an acceptance of any portion of the Work; (b) accelerate the time for any payment to Design-Builder; (c) prejudice any rights of Owner provided by any insurance, bond, or the Contract Documents; (d) relieve Design-Builder of the risk of loss or any of the obligations established by the Contract Documents; (e) establish a date for termination or partial termination of the assessment of liquidated damages; or (f) constitute a waiver of claims. Notwithstanding the above, Owner shall be responsible for loss of or damage to the Work resulting from Prior Occupancy.

7.4 Final Completion.

7.4.1 Conditions for Final Completion. Final Completion shall occur when all of the following have been satisfied:

- (1) the Work is fully and finally complete in accordance with the Contract Documents, including: (i) the completion of all Punchlist items; (ii) all as-built information and other documents required by the Contract Documents have been received and accepted by Owner; and (iii) all special tools, spare parts, operating instructions and manuals, and certificates required by the Contract Documents and all other items to be provided by Design-Builder to Owner hereunder shall have been delivered to Owner free and clear of all liens; and
- (2) the Design-Builder has completed all of the requirements, up to and including submittal of a proper application for the LEED Certificate.

7.4.2 Issuance of Final Acceptance Certificate. When Design-Builder believes that Final Completion has occurred, Design-Builder shall issue a proposed Final Acceptance Certificate for approval by Owner. The process for Owner's review, acceptance and/or rejection of this certificate shall be in accordance with [Section 7.3.3.2](#).

7.5 Delay Damages.

7.5.1 Liquidated Damages for Late Substantial Completion. If Design-Builder fails to achieve Substantial Completion by the Guaranteed Completion Date for Substantial Completion, Design-Builder shall be liable for the payment of liquidated damages to Owner in the amount of **XX Thousand Dollars (\$XX)** per each calendar day of delay until Substantial Completion is achieved.

7.5.2 Liquidated Damages Not Penalty. The Parties acknowledge, recognize and agree on the following:

- (1) that because of the unique nature of the Project, it is difficult or impossible to determine with precision the amount of damages that would or might be incurred by Owner as a result of Design-Builder's failure to achieve Substantial Completion on or before the Guaranteed Completion Date for Substantial Completion; and
- (2) that any sums which would be payable under this [Article 7](#) are in the nature of liquidated damages, and not a penalty, and are fair and reasonable and such payment represents a reasonable estimate of fair compensation for the losses that reasonably may be anticipated from such failure.

7.5.3 Actual Damages for Late Final Completion. After Substantial Completion is achieved, actual damages will be assessed for failure to achieve Final Completion by the Guaranteed Completion Date for Final Completion. Actual damages will be calculated on the basis of direct consultant, administrative, and other related costs attributable to the Project as a result of such failure.

7.5.4 Payment of Delay Damages. Delay Damages shall accrue daily, and Owner may offset these costs against any payment due Design-Builder.

ARTICLE 8: CHANGES

8.1 Right to Make Changes. Owner may, at any time and without notice to Design-Builder's surety, order additions, deletions, revisions, or other changes in the Work. These changes in the Work shall be incorporated into the Contract Documents through the execution of Change Orders. If any change in the Work ordered by Owner causes an increase or decrease in the Contract Sum or the Guaranteed Completion Date(s), an equitable adjustment shall be made as provided in [Articles 8, 9, and 10](#), and incorporated into a Change Order.

8.2 Owner May Request a Change Order Proposal (COP) From Design-Builder: If Owner desires to order a change in the Work, it may request a written COP from Design-Builder. Design-Builder shall submit a COP within 14 Days of the request from Owner, or within such other period as mutually agreed. Design-Builder's COP shall be full compensation for implementing the proposed change in the Work, including any adjustment in the Contract Sum or Guaranteed Completion Date(s), and including compensation for all delays in connection with such change in the Work and for any expense or inconvenience, disruption of schedule, or loss of efficiency or productivity occasioned by the change in the Work.

8.2.1 COP Negotiations: Upon receipt of the COP, or a request for equitable adjustment in the Contract Sum or Guaranteed Completion Date(s), or both, as provided in [Articles 9 and 10](#), Owner may accept or reject the proposal, request further documentation, or negotiate acceptable terms with Design-Builder. Pending agreement on the terms of the Change Order, Owner may direct Design-Builder to proceed immediately with the Change Order Work. Design-Builder shall not proceed with any change in the Work until it has obtained Owner's approval or

Owner's Field Authorization as provided in [Section 8.3](#). All Work done pursuant to any Owner-directed change in the Work shall be executed in accordance with the Contract Documents.

8.2.2 Change Order as full payment and final settlement: If Owner and Design-Builder reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Guaranteed Completion Date(s), such agreement shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of all claims for time and for direct, indirect, and consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity, related to any Work either covered or affected by the Change Order, or related to the events giving rise to the request for equitable adjustment.

8.2.3 Failure to agree upon terms of Change Order; Final offer and Claims: If Owner and Design-Builder are unable to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Guaranteed Completion Date(s), Design-Builder may at any time in writing, request a final offer from Owner. Owner shall provide Contractor with its written response within 30 Days of Design-Builder's request. Owner may also provide Design-Builder with a final offer at any time. If Design-Builder rejects Owner's final offer, or the parties are otherwise unable to reach agreement, Design-Builder only remedy shall be to file a Claim as provided in [Article 11](#).

8.3 Field Authorizations. The Owner may direct the Design-Builder to proceed with a change in the work through a written Field Authorization (may also be referred to as a Field Order) when the time required to price and execute a Change Order would impact the Project. The Field Authorization shall describe and include the following: (1) The scope of work; (2) An agreed upon maximum not-to-exceed amount; (3) Any estimated change to the Guaranteed Completion Date(s); (4) The method of final cost determination in accordance with the requirements of [Article 9](#).; (5) The supporting cost data to be submitted in accordance with the requirements of [Article 9](#).

Upon satisfactory submittal by the Design-Builder and approval by the Owner of supporting cost data, a Change Order will be executed. The Owner will not make payment to the Design-Builder for Field Authorization work until that work has been incorporated into an executed Change Order.

8.4. Owner's Rights to Undertake or Reject Proposed Changes. Owner shall have the right, at any time and in its sole discretion: (a) to direct Design-Builder to proceed immediately with the proposed change under a Field Authorization, pending agreement by the Parties on the terms of a Change Order; or (b) not to undertake any contemplated change, provided, however, that in such event, if Design-Builder was required to prepare a design as part of the proposed change, then Design-Builder shall be paid the reasonable costs it has incurred in preparing such design.

8.5 Changes of Law. If, after the date of this Agreement and prior to Substantial Completion, there shall be any Change of Law, then Design-Builder shall have the right to submit a request for an equitable adjustment in accordance with [Section 8.6](#).

8.6 Design-Builder's Requests for Equitable Adjustments. If Design-Builder believes that any event arising out of or relating to the Work causes a material increase in its cost of, or time required for the performance of, any part of the Work, and that under the terms of the Contract Documents such event entitles Design-Builder to an adjustment to the Contract Sum or the Guaranteed Completion Date(s), then Design-Builder shall comply with the following processes.

8.6.1 Request for Equitable Adjustment. Design-Builder shall provide Owner with written notice, in accordance with [Section 8.6.2](#), of any event that Design-Builder believes entitles it to an equitable adjustment in the Contract Sum and/or Guaranteed Completion Date(s) within fourteen (14) days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Design-Builder knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Design-Builder believes it is entitled to an adjustment in the Contract Sum, Design-Builder shall immediately notify Owner

and begin to keep and maintain complete, accurate, and specific daily records. Design-Builder shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.

8.6.2 Contents of the Initial Notice. Design-Builder shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than fourteen (14) days before Design-Builder's written notice to Owner. The written notice shall set forth, at a minimum, a description of: (a) the event giving rise to the request for an equitable adjustment in the Contract Sum; (b) the nature of the impacts to Design-Builder; and (c) to the extent possible the amount of the adjustment in Contract Sum requested. Failure properly to give such written notice shall constitute a waiver of Design-Builder's right to an equitable adjustment.

8.6.3 Contents of the Supplemental Notice. Within thirty (30) days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Design-Builder shall supplement the written notice provided in accordance with [Section 8.6.2](#) above with additional supporting data. Such additional data shall include, at a minimum: (a) the amount of compensation requested, itemized in accordance with the procedure set forth herein; (b) specific facts, circumstances, and analysis that confirms not only that Design-Builder suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Design-Builder for such act, event, or condition; and (c) documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request relates to a delay or change in the Guaranteed Completion Date(s), Design-Builder shall also be obligated to comply with all of the requirements of [Article 10](#). Failure to provide such additional information and documentation within the time allowed or within the format required shall constitute a waiver of Design-Builder's right to an equitable adjustment.

8.6.4 Combined Requests for Price and Time Adjustments. Any requests by Design-Builder for an equitable adjustment in the Contract Sum and in the Guaranteed Completion Date(s) that arise out of the same event(s) shall be submitted together.

8.6.5 Fault or Negligence of Design-Builder. Design-Builder shall have no right to seek an equitable adjustment to the Contract Sum or Guaranteed Completion Date(s) if the basis for the adjustment arises out of or relates to events, to the extent caused by the fault or negligence of Design-Builder, or anyone for whose acts Design-Builder is responsible.

8.7 Computation of Adjustments

8.7.1 Contract Sum. The computation of the value of any Change Order, Design-Builder request for equitable adjustment under [Section 8.6](#), or any other adjustment to the Contract Sum, shall be determined in accordance with [Article 9](#).

8.7.2 Guaranteed Completion Date(s). The computation of any adjustments to the Guaranteed Completion Date(s) as the result of any Change Order, or of any Design-Builder request for equitable adjustment under [Section 8.6](#), or any other event or reason, shall be as set forth in [Article 10](#).

8.8 Duty to Proceed. No dispute under the Contract Documents, including those relating to the entitlement, cost, or time associated with a contemplated change or Design-Builder request for equitable adjustment under [Section 8.6](#), shall interfere with the progress of the Work and Owner shall continue to satisfy its payment obligations to Design-Builder pending the final resolution of any dispute or disagreement. Design-Builder shall have the duty diligently to proceed with the Work in accordance with Owner's instructions despite any dispute or claim, including those events where the Parties are in disagreement as to whether instructions from Owner constitute a valid claim or change to the Contract Documents and justify adjustments to the Contract Sum or Guaranteed Completion Date(s). Design-Builder's sole recourse in the event of a dispute will be to pursue its rights under [Article 11](#).

8.9 Oral Instructions. Design-Builder shall comply with oral instructions to Key Personnel received from Owner, provided, however, that if Design-Builder believes that any oral instruction may affect the Contract Sum or Guaranteed Completion Date(s), or cause the Work not to be in compliance with the Contract Documents, Design-Builder shall provide written notice to Owner within three (3) days of such oral instruction that it requires that the instruction be given in writing. Any and all costs incurred by Design-Builder to perform oral instructions without having been reduced to writing by Owner shall be for Design-Builder's account and Design-Builder hereby waives any and all rights to claim any relief for such oral instructions.

ARTICLE 9: ADJUSTMENTS TO THE CONTRACT SUM

9.1 Change in the Contract Sum – General Application.

9.1.1 Contract Sum Changes Only By Change Order. The Contract Sum shall only be changed by a Change Order. Design-Builder shall include any request for a change in the Contract Sum in its Change Order Proposal.

9.1.2 Owner Fault or Negligence as Basis for Change in Contract Sum. If the cost of Design-Builder's performance is changed due to the fault or negligence of Owner, or anyone for whose acts Owner is responsible, Design-Builder shall be entitled to make a request for an equitable adjustment in the Contract Sum in accordance with the following procedure. No change in the Contract Sum shall be allowed to the extent: Design-Builder's changed cost of performance is due to the fault or negligence of Design-Builder, or anyone for whose acts Design-Builder is responsible; or the change is concurrently caused by Design-Builder and Owner.

- a. **Notice and Record Keeping for Equitable Adjustment.** A request for an equitable adjustment in the Contract Sum shall be based on written notice delivered to Owner within fourteen (14) Days of the occurrence of the event giving rise to the request. For purposes of this part, "occurrence" means when Design-Builder knew, or in its diligent prosecution of the Work should have known, of the event giving rise to the request. If Design-Builder believes it is entitled to an adjustment in the Contract Sum, Design-Builder shall immediately notify Owner and begin to keep and maintain complete, accurate, and specific daily records. Design-Builder shall give Owner access to any such records and, if requested shall promptly furnish copies of such records to Owner.
- b. **Content of Notice for Equitable Adjustment; Failure to Comply.** Design-Builder shall not be entitled to any adjustment in the Contract Sum for any occurrence of events or costs that occurred more than fourteen (14) Days before Design-Builder's written notice to Owner. The written notice shall set forth, at a minimum, a description of: the event giving rise to the request for an equitable adjustment in the Contract Sum; the nature of the impacts to Design-Builder and its Subcontractors of any tier, if any; and to the extent possible the amount of the adjustment in Contract Sum requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design-Builder's right to an equitable adjustment.
- c. **Design-Builder to Provide Supplemental Information.** Within 30 Days of the occurrence of the event giving rise to the request, unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Design-Builder shall supplement the written notice provided in accordance with subparagraph a. above with additional supporting data. Such additional data

shall include, at a minimum: the amount of compensation requested, itemized in accordance with the procedure set forth herein; specific facts, circumstances, and analysis that confirms not only that Design-Builder suffered the damages claimed, but that the damages claimed were actually a result of the act, event, or condition complained of and that the Contract Documents provide entitlement to an equitable adjustment to Design-Builder for such act, event, or condition; and documentation sufficiently detailed to permit an informed analysis of the request by Owner. When the request for compensation relates to a delay, or other change in Contract Time, Design-Builder shall demonstrate the impact on the critical path, in accordance with [Section 10.5](#). Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design-Builder's right to an equitable adjustment.

- d. **Design-Builder to Proceed with Work as Directed.** Pending final resolution of any request made in accordance with this paragraph, unless otherwise agreed in writing, Design-Builder shall proceed diligently with performance of the Work.
- e. **Design-Builder to Combine Requests for Same Event Together.** Any requests by Contractor for an equitable adjustment in the Contract Sum and in the Guaranteed Completion Date(s) that arise out of the same event(s) shall be submitted together.

9.1.3 Methods for Calculating Change Order Amount. The value of any Work covered by a Change Order, or of any request for an equitable adjustment in the Contract Sum, shall be determined by one of the following methods:

- a. **Fixed Price:** On the basis of a fixed price as determined in [Section 9.2](#).
- b. **Unit Prices:** By application of unit prices to the quantities of the items involved as determined in [Section 9.3](#).
- c. **Time and Materials:** On the basis of time and material as determined in [Section 9.4](#).

9.1.4 Time and Materials Method Is Default; Owner May Direct Otherwise. When Owner has requested Design-Builder to submit a Change Order Proposal, Owner may direct Design-Builder as to which method in [Section 9.1.3](#) to use when submitting its proposal. Otherwise, Design-Builder shall determine the value of the Work, or if a request for an equitable adjustment, on the basis of the fixed price method.

9.2 Change Order Pricing – Fixed Price.

9.2.1 Procedures. When the fixed price method is used to determine the value of any Work covered by a Change Order, or of a request for an equitable adjustment in the Contract Sum, the following procedures shall apply.

9.2.2 Breakdown and Itemization of Details on COP. Design-Builder's Change Order Proposal, or request for adjustment in the Contract Sum, shall be accompanied by a complete itemization of the costs, including labor, material, equipment, subcontractor, design, and overhead and profit. The costs shall be itemized in the manner set forth below, and shall be submitted on breakdown sheets in a form approved by Owner.

9.2.3 Use of Industry Standards in Calculating Costs. All costs shall be calculated based upon appropriate industry standard methods of calculating labor, material quantities, and equipment costs.

9.2.4 Costs Contingent on Owner's Actions. If any of Design-Builder's pricing assumptions are contingent upon anticipated actions of Owner, Design-Builder shall clearly state them in the proposal or request for an equitable adjustment.

9.2.5 Markups on Additive and Deductive Work. The cost of any additive or deductive changes in the Work shall be calculated as set forth below, except that overhead and profit shall not be included on deductive changes in the Work. Where a change in the Work involves additive and deductive work by the same Design-Builder or Subcontractor, small tools, overhead, profit, bond and insurance markups will apply to the net difference.

9.2.6 Breakdown Not Required if Change Less Than \$1,000. If the total cost of the change in the Work or request for equitable adjustment does not exceed \$1,000, Design-Builder shall not be required to submit a breakdown if the description of the change in the Work or request for equitable adjustment is sufficiently definitive for Owner to determine fair value.

9.2.7 Breakdown Required if Change Between \$1,000 and \$2,500. If the total cost of the change in the Work or request for equitable adjustment is between \$1,000 and \$2,500, Design-Builder may submit a breakdown in the following level of detail if the description of the change in the Work or if the request for equitable adjustment is sufficiently definitive to permit the Owner to determine fair value:

- a. lump sum labor;
- b. lump sum material;
- c. lump sum equipment usage;
- d. overhead and profit; and
- e. insurance and bond costs.

9.2.8 Components of Increased Cost. Any request for adjustment of Contract Sum based upon the fixed price method shall include only the following items:

- a. **Craft Labor Costs:** These are the labor costs determined by multiplying the estimated or actual additional number of craft hours needed to perform the change in the Work by the hourly labor costs. Craft hours should cover direct labor, as well as indirect labor due to trade inefficiencies. The hourly costs shall be based on the following:
 - (1) **Basic Wages and Benefits:** Hourly rates and benefits as stated on the Department of Labor and Industries approved "statement of intent to pay prevailing wages" or a higher amount if approved by the Owner. Direct supervision shall be a reasonable percentage not to exceed 15% of the cost of direct labor. No supervision markup shall be allowed for a working supervisor's hours.
 - (2) **Worker's Insurance:** Direct contributions to the state of Washington for industrial insurance; medical aid; and supplemental pension, by the class and rates established by the Department of Labor and Industries.
 - (3) **Federal Insurance:** Direct contributions required by the Federal Insurance Compensation Act; Federal Unemployment Tax Act; and the State Unemployment Compensation Act.
 - (4) **Travel Allowance:** Travel allowance and/or subsistence, if applicable, not exceeding those allowances established by regional labor union agreements, which are itemized and identified separately.

(5) **Safety:** Cost incurred due to the Washington Industrial Safety and Health Act, which shall be a reasonable percentage not to exceed 2% of the sum of the amounts calculated in (1), (2), and (3) above.

b. **Material Costs:** This is an itemization of the quantity and cost of materials needed to perform the change in the Work. Material costs shall be developed first from actual known costs, second from supplier quotations or if these are not available, from standard industry pricing guides. Material costs shall consider all available discounts. Freight costs, express charges, or special delivery charges, shall be itemized.

c. **Equipment Costs:** This is an itemization of the type of equipment and the estimated or actual length of time the construction equipment appropriate for the Work is or will be used on the change in the Work. Costs will be allowed for construction equipment only if used solely for the changed Work, or for additional rental and transportation costs actually incurred by the Contractor. Equipment charges shall be computed on the basis of actual invoice costs or if owned, from the current edition of one of the following sources:

(1) Associated General Contractors Washington State Department of Transportation (AGC WSDOT) Equipment Rental Agreement current edition, on the Contract execution date.

(2) The National Electrical Contractors Association for equipment used on electrical work.

(3) The Mechanical Contractors Association of America for equipment used on mechanical work.

The Equipment Watch Rental Rate Blue Book shall be used as a basis for establishing rental rates of equipment not listed in the above sources. The maximum rate for standby equipment shall not exceed that shown in the AGC WSDOT Equipment Rental Agreement, current edition on the Contract execution date.

d. **Allowance for Small Tools, Expendables & Consumable Supplies:** Small tools consist of tools which cost \$250 or less and are normally furnished by the performing contractor. The maximum rate for small tools shall not exceed the following:

(1) **3% for Design-Builder:** For Design-Builder, 3% of direct labor costs.

(2) **5% for Subcontractors:** For Subcontractors, 5% of direct labor costs.

Expendables and consumables supplies directly associated with the change in Work must be itemized.

e. **Design Costs:** Cost of design incurred in connection with a change. Costs to be enumerated using rates for labor as set forth in the rate sheet attached as [Exhibit E – Schedule 9.2.8e](#).

f. **Subcontractor Costs:** This is defined as payments Design-Builder makes to Subcontractors for changed Work performed by Subcontractors of any tier. The Subcontractors' cost of Work shall be calculated and itemized in the same manner as prescribed herein for Design-Builder.

- g. **Allowance for Overhead:** This is defined as costs of any kind attributable to direct and indirect delay, acceleration, or impact, added to the total cost to Owner of any change in the Contract Sum. If the Design-Builder is compensated under [Section 10.6.2](#), the amount of such compensation shall be reduced by the amount Design-Builder is otherwise entitled to under this subsection (g). This allowance shall compensate Design-Builder for all non-craft labor, temporary construction facilities, field engineering, schedule updating, as-built drawings, home office cost, B&O taxes, office engineering, estimating costs, additional overhead because of extended time, and any other cost incidental to the change in the Work. It shall be strictly limited in all cases to a reasonable amount, mutually acceptable, or if none can be agreed upon to an amount not to exceed the rates below:
- (1) **Design-Builder Markup on Design-Builder Work:** For Design-Builder, for any Work actually performed by its own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
 - (2) **Subcontractor Markup for Subcontractor Work:** For each Subcontractor (including lower tier subcontractors), for any Work actually performed by its own forces, 12% of the first \$50,000 of the cost, and 4% of the remaining cost, if any.
 - (3) **Design-Builder Markup for Subcontractor Work:** For Design-Builder, for any Work performed by its Subcontractor(s), 4% of the first \$50,000 of the amount due each Subcontractor, and 2% of the remaining amount if any.
 - (4) **Subcontractor Markup for Lower Tier Subcontractor Work:** For each Subcontractor, for any Work performed by its Subcontractor(s) of any lower tier, 4% of the first \$50,000 of the amount due the sub-Subcontractor, and 2% of the remaining amount if any.
 - (5) **Basis of Cost Applicable for Markup:** The cost to which overhead is to be applied shall be developed in accordance with [Section 9.2.8 a – e](#).
- h. **Allowance for Profit:** Allowance for profit is an amount to be added to the cost of any change in Contract Sum, but not to the cost of change in Guaranteed Completion Date(s) for which Design-Builder has been compensated pursuant to the conditions set forth in [Section 10.6.2](#). It shall be limited to a reasonable amount, mutually acceptable, or if none can be agreed upon, to an amount not to exceed the rates below:
- (1) **Design-Builder / Subcontractor Markup for Self-Performed Work:** For Design-Builder or Subcontractor of any tier for work performed by their forces, 6% of the cost developed in accordance with [Section 9.2.8 a. – e](#).
 - (2) **Design-Builder / Subcontractor Markup for Work Performed at Lower Tier:** For Design-Builder or Subcontractor of any tier for work performed by a subcontractor of a lower tier, 4% of the subcontract cost developed in accordance with [Section 9.2.8 a. – i](#).
- i. **Insurance and Bond Premiums:** Cost of change in insurance or bond premium: This is defined as:
- (1) **Design-Builder's Liability Insurance:** The cost of any changes in Design-Builder's liability insurance arising directly from execution of the Change Order; and

- (2) **Payment and Performance Bond:** The cost of the additional premium for Design-Builder's bond arising directly from the changed Work.

The cost of any change in insurance or bond premium shall be added after overhead and allowance for profit are calculated in accordance with subparagraph g. and h above.

9.3 Change Order Pricing – Unit Prices.

9.3.1 Content of Owner Authorization. Whenever Owner authorizes Design-Builder to perform Work on a unit-price basis, Owner's authorization shall clearly state:

- a. **Scope:** Scope of work to be performed;
- b. **Reimbursement Basis:** Type of reimbursement including pre-agreed rates for material quantities; and
- c. **Reimbursement Limit:** Cost limit of reimbursement.

9.3.2 Design-Builder Responsibilities. Design-Builder shall:

- a. Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, Design-Builder shall identify workers assigned to the Change Order Work and areas in which they are working;
- b. Leave access as appropriate for quantity measurement; and
- c. Not exceed any cost limit(s) without Owner's prior written approval.

9.3.3 Cost Breakdown Consistent with Fixed Price Requirements. Design-Builder shall submit costs in accordance with [Section 9.2](#) and satisfy the following requirements:

- a. **Unit prices must include overhead, profit, bond and insurance premiums:** Unit prices shall include reimbursement for all direct and indirect costs of the Work, including overhead, profit, bond, and insurance costs; and
- b. **Owner verification of quantities:** Quantities must be supported by field measurement statements signed by Owner.

9.4 Change Order Pricing – Time and Material Prices.

9.4.1 Content of Owner Authorization. Whenever Owner authorizes Design-Builder to perform Work on a time-and-material basis, Owner's authorization shall clearly state:

- a. **Scope:** Scope of Work to be performed;
- b. **Reimbursement basis:** Type of reimbursement including pre-agreed rates, if any, for material quantities or labor; and
- c. **Reimbursement limit:** Cost limit of reimbursement.

9.4.2 Design-Builder Responsibilities. Design-Builder shall:

- a. **Identify workers assigned:** Cooperate with Owner and assist in monitoring the Work being performed. As requested by Owner, identify workers assigned to the Change Order Work and areas in which they are working;
- b. **Provide daily timesheets:** Identify on daily time sheets all labor performed in accordance with this authorization. Submit copies of daily time sheets within 2 working days for Owner's review;

- c. **Allow Owner to measure quantities:** Leave access as appropriate for quantity measurement;
- d. **Perform Work efficiently:** Perform all Work in accordance with this section as efficiently as possible; and
- e. **Not exceed Owner's cost limit:** Not exceed any cost limit(s) without Owner's prior written approval.

9.4.3 Cost Breakdown Consistent with Fixed Price Requirements. Design-Builder shall submit costs in accordance with [Section 9.2](#) and additional verification supported by:

- a. **Timesheets:** Labor detailed on daily time sheets; and
- b. **Invoices:** Invoices for material.

9.5 Compensation for Adjustments to the Guaranteed Completion Date(s). Design-Builder's rights to seek compensation for the cost of an adjustment to the Guaranteed Completion Date(s), and the amount of such compensation, are set forth in [Section 10.6](#).

ARTICLE 10: ADJUSTMENTS TO THE GUARANTEED COMPLETION DATE(S)

10.1 Requests for Contract Time. The Contract Time shall only be changed by a Change Order. Design-Builder shall include any request for a change in the Contract Time in its Change Order Proposal.

10.2 Time Extension Permitted if Not Contractor's Fault. If the time of Design-Builder's performance is changed due to an Excusable Delay, or due to the fault or negligence of Owner or anyone for whose acts Owner is responsible, Design-Builder shall be entitled to make a request for an equitable adjustment in the Contract Time in accordance with the following procedure. No adjustment in the Contract Time shall be allowed to the extent Design-Builder's changed time of performance is due to the fault or negligence of Design-Builder, or anyone for whose acts Design-Builder is responsible.

10.3 Adjustment of Guaranteed Completion Date(s). The Guaranteed Completion Date(s) shall be adjusted by the amount of time Design-Builder actually is delayed by an Excusable Delay in the performance of the Work, provided that: (a) notice is given by Design-Builder as hereinafter provided; (b) the delay impacts the critical path (as reflected on the most recent monthly Project Schedule update) and is outside the reasonable control of Design-Builder; (c) Design-Builder's performance would not have been concurrently delayed or interrupted by any event other than those identified in [Section 10.7](#); and (d) Design-Builder, in view of all the circumstances, has exercised reasonable efforts to avoid the delay and did not cause the delay. Delays of Subcontractors shall be deemed to be within the reasonable control of Design-Builder, unless such delays are themselves excusable in accordance with the provisions of this Agreement.

10.4 Notice and Supporting Documentation. Design-Builder shall not be entitled to an adjustment in the Guaranteed Completion Date(s) for any events that occurred more than fourteen (14) days before Design-Builder's written notice to Owner. The written notice shall set forth, at a minimum, a description of: (a) the event giving rise to the request for an equitable adjustment in the Guaranteed Completion Date(s); (b) the nature of the impacts to Design-Builder and its Subcontractors of any tier, if any; (c) the impact to the critical path; and (d) to the extent possible the amount of the adjustment in the Guaranteed Completion Date(s) requested. Failure to properly give such written notice shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design-Builder's right to an equitable adjustment.

10.5 Supplementation. Within thirty (30) days of the occurrence of the event giving rise to the request for an extension to the Guaranteed Completion Date(s), unless Owner agrees in writing to allow an additional period of time to ascertain more accurate data, Design-Builder shall supplement the written notice provided in accordance with [Section 10.4](#) with additional supporting data. Such additional data

shall include, at a minimum: (a) the amount of delay claimed, itemized in accordance with the procedure set forth herein; (b) specific facts, circumstances, and analysis that confirms not only that Design-Builder suffered the delay claimed, but that the delay claimed was actually a result of the act, event, or condition complained of, and that the Contract Documents provide entitlement to an equitable adjustment in the Guaranteed Completion Date(s) for such act, event, or condition; and (c) supporting documentation sufficiently detailed to permit an informed analysis of the request by Owner. Design-Builder is further required to submit to Owner, as part of these supplemental materials, an acceleration schedule on a fragment basis to demonstrate how such delay can be eliminated. Failure to provide such additional information and documentation within the time allowed or within the format required shall, to the extent Owner's interests are prejudiced, constitute a waiver of Design-Builder's right to an equitable adjustment.

10.6 Adjustment of Contract Sum for Excusable Delays

10.6.1 Compensable and Non-Compensable Excusable Delays. If Design-Builder encounters an Excusable Delay under [Sections 10.7](#) (1), (2), (3), (4), (5), (10), (11), or (13), for which it is entitled to a time extension pursuant to [Section 10.3](#), Design-Builder also shall be entitled to an adjustment of the Contract Sum. Except as provided in the preceding sentence, Design-Builder expressly waives any and all monetary relief for any delay to the Work, whether or not such delay is an Excusable Delay, and specifically agrees that its sole and exclusive remedy for Excusable Delay, including any loss of productivity or impact costs associated with such Excusable Delays, will be an adjustment to the Guaranteed Completion Date(s).

10.6.2 Adjustments to Contract Sum. The daily cost of any change in the Guaranteed Completion Date(s) shall be limited to the items below, less the amount of any change in the Contract Sum the Design-Builder may otherwise be entitled to pursuant to [Section 9.2.8g](#) for any change in the Work that contributed to this change in Guaranteed Completion Date(s):

- (1) Cost of nonproductive field supervision or labor extended because of the delay;
- (2) Cost of weekly meetings or similar indirect activities extended because of the delay;
- (3) Cost of temporary facilities or equipment rental extended because of the delay;
- (4) Cost of insurance extended because of the delay;
- (5) General and administrative overhead in an amount to be agreed upon, but not to exceed three percent (3%) of the original Contract Sum divided by the originally specified Contract Time for each Day of the delay.

10.7 Events Constituting Excusable Delay. The following events shall constitute Excusable Delay, provided, however, that before any event is deemed to be an Excusable Delay, Design-Builder shall be required to meet the conditions set forth in [Section 10.3](#) for each such event:

- (1) Owner's suspension of all or part of the Work pursuant to [Article 17](#);
- (2) Any failure of Owner to act within the times expressly provided in this Agreement;
- (3) Any unreasonable delay caused by the acts or omissions of Owner or persons acting on Owner's behalf;
- (4) Owner changes pursuant to [Article 8](#);
- (5) Hazardous Materials encountered by Design-Builder under [Section 2.2](#), subject to the express conditions of such section;
- (6) Major earthquakes or floods;
- (7) Unusually severe weather, in excess of weather conditions experienced within the area any time in the preceding ten years, based upon the following events:
 - (a) Monthly rainfall in excess of the highest monthly rainfall experienced for the same month.

- (b) Annual rainfall in excess of the highest annual rainfall experienced.
 - (c) Monthly snowfall in excess of the highest monthly snowfall experienced for the same month.
 - (d) Annual snowfall in excess of the highest annual snowfall experienced.
 - (e) Average high temperatures, for the summer months, in excess of the highest average temperatures experienced.
 - (f) Average low temperatures for the winter months, lower than the lowest average temperatures experienced.
- (8) Public disorders, insurrection, rebellion, epidemic, terrorism, acts of war;
 - (9) Fire or other casualty for which Design-Builder is not responsible;
 - (10) Actions of Governmental Units enjoining the Project from proceeding or in unreasonably delaying the issuance of a Government Approval;
 - (11) Changes in Laws; and
 - (12) Labor strikes lasting in excess of three (3) consecutive days that affect a specific trade on a national or regional level and such strike was not caused by the acts or omissions of Design-Builder or Subcontractors.
 - (13) Differing Site Conditions as set forth in [Section 3.4.3](#).
 - (14) Supplier delay of sole source products, provided the delay is completely outside the control of the Design-Builder.

10.8 Events Not Considered As Excusable Delay. The following events shall not constitute Excusable Delay, and Design-Builder assumes all risk of such events:

- (1) Actions or inactions of Government Units except as provided in [Section 10.7\(10\)](#);
- (2) Delays in obtaining or delivery of goods or services from Design-Builder or any Subcontractor unless such delay is caused by an Excusable Delay encountered by the Subcontractor;
- (3) Economic conditions, including labor shortages, inexperienced or unqualified labor, material shortages, or increases in the prices of labor or material.
- (4) Delays of common carriers;
- (5) Delays or disruptions arising out of or related to security clearances at the Site unless such delays or disruptions are not due to the actions or omissions of the Design-Builder or its subcontractors;
- (6) Adverse weather conditions, except as provided in [Sections 10.7\(6\) and 10.7\(7\)](#); and
- (7) Any other delay not specifically enumerated in [Section 10.7](#).

10.9 Design-Builder To Proceed With Work As Directed. Pending final resolution of any request in accordance with this paragraph, unless otherwise agreed in writing, Design-Builder shall proceed diligently with performance of the Work.

10.10 Disputes; Burden of Proof. In case of a dispute regarding the application of the provisions of this [Article 10](#), including any dispute as to whether an Excusable Delay has occurred, either Party shall have the right to submit the dispute for resolution pursuant to [Article 11](#), and Design-Builder shall bear the burden of proof, by clear and convincing evidence, in establishing its entitlement to adjustments to the Guaranteed Completion Date(s) and its entitlement to relief under this [Article 10](#).

ARTICLE 11: CLAIMS AND DISPUTE RESOLUTION

11.1 Final Offer. If the Parties fail to reach agreement on the terms of any change in the Work, including any adjustment in the Contract Sum or Guaranteed Completion Date(s), Design-Builder, at any time, may request in writing a final offer from Owner. Owner shall provide its written response within thirty (30) days of Design-Builder's request. Owner also may provide Design-Builder with a final offer at any time. If Design-Builder rejects Owner's final offer, or the Parties are unable to reach agreement, Design-Builder's only remedy shall be to file a Claim in accordance with this [Article 11](#).

11.2 Claims Process

11.2.1 Claim Filing Deadline for Contractor. Design-Builder shall file its Claim within the earlier of one hundred twenty (120) days from Owner's final offer in accordance with [Section 11.1](#) (if such an offer has been made) or the date of Final Completion.

11.2.2 Claim Must Cover All Costs and Be Documented. The Claim shall be deemed to cover all changes in cost and time (including direct, indirect, impact, and consequential) to which Design-Builder may be entitled. It shall be fully substantiated and documented and, at a minimum, shall contain the following information:

- (1) A detailed factual statement of the Claim for additional compensation and time, if any, providing all necessary dates, locations, and items of Work affected by the Claim;
- (2) The date on which facts arose which gave rise to the Claim;
- (3) The name of each employee, agent or representative of Owner knowledgeable about the Claim;
- (4) The specific provisions of the Contract Documents which support the Claim;
- (5) The identification of any documents and the substance of any oral communications that support the Claim;
- (6) Copies of any identified documents, other than the Contract Documents, that support the Claim;
- (7) If an adjustment in the Guaranteed Completion Date(s) is sought, then: (a) the specific days and dates for which it is sought; (b) the specific reasons Design-Builder believes an extension in the Guaranteed Completion Date(s) should be granted; and (c) Design-Builder's analysis of its Project Schedule to demonstrate the reason for such an adjustment;
- (8) If an adjustment in the Contract Sum is sought, the exact amount sought and a breakdown of that amount into the categories set forth in, and in the detail required by, [Article 9](#); and
- (9) A statement certifying, under penalty of perjury, that the Claim is made in good faith, that the supporting cost and pricing data are true and accurate to the best of Design-Builder's knowledge and belief, that the Claim is fully supported by the accompanying data, and that the amount requested accurately reflects the adjustment in the Contract Sum or Guaranteed Completion Date(s) for which Design-Builder believes Owner is liable.

11.2.3 Time for Owner's Response to Claim. After Design-Builder has submitted a fully documented Claim that complies with all applicable provisions of [Section 11.2.2](#), Owner shall respond in writing to Design-Builder as follows:

- (1) If the Claim amount is less than \$50,000, Owner shall provide a decision within sixty (60) days from the date the Claim is received; or
- (2) If the Claim amount is \$50,000 or more, Owner shall provide a decision within ninety (90) days from the date the Claim is received, or with notice to Design-

Builder of the date by which it will render its decision. Owner will then respond with a written decision in such additional time.

11.2.4 Owner's Review of Claim & Finality of Decision. To assist in the review of any Claim, Design-Builder shall provide any additional information requested by Owner. Design-Builder shall proceed with performance of the Work pending final resolution of any Claim in accordance with [Section 8.8](#). Owner's written decision on a Claim shall be final and conclusive as to all matters set forth in the Claim, unless Design-Builder follows the procedures set forth in [Section 11.3](#).

11.2.5 Waiver of Design-Builder Rights for Failure to Comply with this Section. Any Claim of Design-Builder against Owner for damages, additional compensation, or additional time, shall be conclusively deemed to have been waived by Design-Builder unless timely made in accordance with the requirements of this [Section 11.2](#).

11.3 Timing of Design-Builder's Demand for Arbitration. If Design-Builder disagrees with Owner's decision rendered in accordance with [Section 11.2](#), Design-Builder shall provide Owner with a written demand for arbitration. No demand for arbitration of any such Claim shall be made later than thirty (30) days after the date of Owner's decision on such Claim; failure to demand arbitration within said thirty (30) day period shall result in Owner's decision being final and binding upon Design-Builder and all Subcontractors.

11.3.1 Filing of Notice for Arbitration. Notice of the demand for arbitration shall be filed with the American Arbitration Association (AAA), with a copy provided to Owner. The Parties shall negotiate or mediate under the Construction Industry Arbitration Rules & Mediation Procedures of the AAA ("AAA Rules"), or mutually acceptable service, before seeking arbitration in accordance with the then-applicable AAA Rules.

11.3.2 Arbitration Is the Forum for Resolving Claims. All Claims arising out of the Work shall be resolved by binding arbitration in accordance with the then-applicable AAA Rules. The judgment upon the arbitration award may be entered, or review of the award may occur, in the superior court having jurisdiction thereof. No independent legal action relating to or arising from the Work shall be maintained.

11.3.3 Owner May Combine Claims Into Same Arbitration. Claims between Owner and Design-Builder and Design-Builder and its Subcontractors shall, upon demand by Owner, be submitted in the same arbitration or mediation.

11.3.4 Resulting Change Order. If the Parties resolve the Claim prior to arbitration judgment, the terms of the resolution shall be incorporated in a Change Order. The Change Order shall constitute full payment and final settlement of the Claim, including all claims for time and for direct, indirect, or consequential costs, including costs of delays, inconvenience, disruption of schedule, or loss of efficiency or productivity.

11.4 Continuation of Work. Design-Builder shall continue to perform the Work and Owner shall continue to satisfy its payment obligations to Design-Builder pending final resolution of any dispute or disagreement.

11.5 Owner May Audit Claims. All Claims filed against Owner shall be subject to audit at any time following the filing of the Claim. Failure of Design-Builder, or Subcontractors of any tier, to maintain and retain sufficient records to allow Owner to verify all or a portion of the Claim or to permit Owner access to the books and records of Design-Builder, or Subcontractors of any tier, shall constitute a waiver of the Claim and shall bar any recovery.

11.5.1 Design-Builder to Make Documents Available. In support of Owner audit of any Claim, Design-Builder shall, upon request, promptly make available to Owner the following documents:

1. Daily time sheets and supervisor's daily reports;
2. Collective bargaining agreements;
3. Insurance, welfare, and benefits records;
4. Payroll registers;
5. Earnings records;
6. Payroll tax forms;
7. Material invoices, requisitions, and delivery confirmations;
8. Material cost distribution worksheet;
9. Equipment records (list of company equipment, rates, etc.);
10. Vendors', rental agencies', Subcontractors', and agents' invoices;
11. Contracts between Contractor and each of its Subcontractors, and all lower-tier Subcontractor contracts and supplier contracts;
12. Subcontractors' and agents' payment certificates;
13. Cancelled checks (payroll and vendors);
14. Job cost report, including monthly totals;
15. Job payroll ledger;
16. Planned resource loading schedules and summaries;
17. General ledger;
18. Cash disbursements journal;
19. Financial statements for all years reflecting the operations on the Work. In addition, the Owner may require, if it deems it appropriate, additional financial statements for 3 years preceding execution of the Work;
20. Depreciation records on all company equipment whether these records are maintained by the company involved, its accountant, or others;
21. If a source other than depreciation records is used to develop costs for Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents;
22. All nonprivileged documents which relate to each and every Claim together with all documents which support the amount of any adjustment in Contract Sum or Contract Time sought by each Claim;
23. Work sheets or software used to prepare the Claim establishing the cost components for items of the Claim including but not limited to labor, benefits and insurance, materials, equipment, Subcontractors, all documents which establish the time periods, individuals involved, the hours for the individuals, and the rates for the individuals; and
24. Work sheets, software, and all other documents used by Contractor to prepare its bid.

11.5.2 Contractor to Provide Facilities for Audit and Shall Cooperate. The audit may be performed by employees of Owner or a representative of Owner. Design-Builder, and its Subcontractors, shall provide adequate facilities acceptable to Owner, for the audit during normal business hours. Design-Builder, and all Subcontractors, shall make a good faith effort to

cooperate with Owner's auditors. All records shall be maintained for a period of six (6) years after final payment under this Agreement.

ARTICLE 12: INSPECTION AND CORRECTION OF WORK

12.1 Periodic Inspections. Owner and its respective agents and representatives, including Owner's Design-Build Consultant, shall have the right to inspect and test the Work at the Site or where the same is being prepared, manufactured, fabricated or assembled (including but not limited to any item of equipment and materials, design, engineering, or other service or the workmanship associated therewith). Such inspections and tests include, but are not limited to, those identified in [Section 2.1.5](#) above. Design-Builder shall, at the request of Owner, arrange for any such inspection and testing at reasonable times and upon reasonable advance notice. Owner's inspection and testing may include, to the extent Owner deems it appropriate, testing of such Work. Owner shall inform Design-Builder promptly of any defects or deficiencies in the Work it discovers in any inspection or test of the Work. Any inspection or test by Owner, Owner's Design-Build Consultant or any of their representatives of any part of the Work, or any failure to inspect or test, shall in no way: (a) affect Design-Builder's obligations to perform the Work in accordance with the Contract Documents; (b) constitute or imply acceptance; (c) relieve Contractor of responsibility for risk of loss or damage to the Work; or (d) impair Owner's right to reject defective or nonconforming items, or to avail itself of any other remedy to which it may be entitled. All such inspections and tests shall be conducted in a manner that does not unreasonably interfere with the normal performance and progress of the Work. Notwithstanding anything to the contrary in the Contract Documents, Owner shall have the right to take photographs of the Work and Site at any time.

12.2 Access to and Dismantling of Work. Design-Builder shall cooperate fully with Owner at any reasonable time that Owner shall determine that inspection of the Work is necessary or appropriate. Such cooperation shall include furnishing Owner with access to the Work whenever and wherever Work is in progress, even to the extent of dismantling finished Work where necessary to permit such inspection. If such dismantling and subsequent inspection reveals defects or deficiencies, such Work and all associated Work shall be corrected at the expense of Design-Builder. If such dismantling and subsequent inspection reveals no defects or deficiencies, such Work shall be restored at the expense of Owner.

12.3 Correction of Work. Design-Builder promptly shall correct, at its own expense, any defects or deficiencies in any part of the Work, regardless of the stage of its completion or the time or place of discovery of such errors. If Design-Builder fails to take corrective actions, Owner may replace, correct, or remove the non-conforming work and charge the cost thereof to Design-Builder.

12.4 Work Affected By Corrective Work. Design-Builder shall bear the cost of correcting destroyed or damaged Work, whether completed or partially completed, caused by Design-Builder's correction or removal of Work which is not in accordance with the requirements of the Contract Documents.

12.5 Owner Acceptance of Non-Conforming Work. If Owner prefers to accept Work which is not in accordance with the requirements of the Contract Documents, Owner may do so instead of requiring its removal and correction, in which case the Contract Sum shall be reduced as appropriate and equitable.

12.6 Removal From Site. Design-Builder shall remove from the Site portions of the Work which are not in accordance with the requirements of the Contract Documents and are neither corrected by Design-Builder nor accepted by Owner.

12.7 Observance of Tests. Owner shall have the right to observe all tests of the Work and the Project performed by Design-Builder pursuant to the Contract Documents.

ARTICLE 13: WARRANTIES AND CORRECTION OF DEFECTS OR DEFICIENCIES

13.1 Design-Builder's Warranty. Design-Builder warrants that: (a) the equipment and materials will be new, free of defects or deficiencies in materials and workmanship, and fit and sufficient for their intended purpose as set forth in the Contract Documents; (b) the Work will be performed in accordance with the standards and requirements specified in the Contract Documents; and (c) the Project shall be designed and constructed to meet the requirements of the Contract Documents and to produce a fully functional facility that is capable of achieving all performance objectives of the Contract Documents and of operating free of major defects in its major components.

13.2 Additional Warranty Obligations. With respect to all warranties for Work, Design-Builder shall:

- (1) Obtain all warranties that would be given in normal commercial practice and any specific warranties as set forth in the Contract Documents;
- (2) Require all warranties to be executed, in writing, for the benefit of Owner;
- (3) Enforce all warranties for the benefit of Owner, if directed by Owner; and
- (4) Be responsible to enforce any Subcontractor warranties.

13.3 Correction of Defects or Deficiencies

13.3.1 Obligation to Correct. Design-Builder agrees to correct any Work that is found to not be in conformance with the Contract Documents, including those subject to the warranties identified in [Sections 13.1 and 13.2](#) above, within a period of twelve (12) months from the date of Substantial Completion of the Work, or within such longer period to the extent required by the Contract Documents.

13.3.2 Notice. Design-Builder shall, within seven (7) days of receipt of written notice from Owner that the Work is not in conformance with the Contract Documents, take necessary steps to commence correction of such nonconforming Work, including the correction, removal or replacement of the nonconforming Work and any damage caused to other parts of the Work affected by the nonconforming Work. If Design-Builder fails to commence the necessary steps within such seven (7) day period, Owner, in addition to any other remedies provided under the Contract Documents, may provide Design-Builder with written notice that Owner will commence correction of such nonconforming Work with its own forces. If Owner does perform such corrective Work, Design-Builder shall be responsible for all reasonable costs incurred by Owner in performing such correction. If the nonconforming Work creates an emergency requiring an immediate response, the seven (7) day periods identified herein shall be inapplicable.

13.3.3 No Limitation on Other Obligations. Nothing contained in this section shall be construed to establish a period of limitation with respect to other obligations which Design-Builder might have according to the Contract Documents. Establishment of the time period of twelve (12) months as described in [Section 13.3.1](#) relates only to the specific obligation of Design-Builder to correct the Work, and has no relationship to the time within which Design-Builder's obligation to comply with the Contract Documents may be sought to be enforced, including the time within which such proceedings may be commenced.

13.4 Warranty Survey. Owner shall schedule a warranty survey to take place nine (9) months after Substantial Completion. Design-Builder will be given an opportunity to attend the warranty survey at its own expense. In accordance with [Section 13.3](#), Owner will provide Design-Builder notice of all defects and deficiencies discovered during the warranty survey.

ARTICLE 14: TITLE AND OWNERSHIP OF WORK PRODUCT

14.1 Clear Title. Design-Builder warrants and guarantees that legal title to and Ownership of the Work shall be free and clear of any and all liens, claims, security interests, or other encumbrances when title thereto passes to Owner. With respect to all computer programs used in connection with the

operation and maintenance of the Project, Design-Builder warrants legal title to, or a legal license to use, such programs when title thereto passes to Owner. Title to all Work, equipment and materials, tools, supplies provided by Design-Builder as part of the Work will pass to Owner as and to the extent: (a) payment therefor is made by Owner in accordance with this Agreement; (b) they are incorporated into the Project; or (c) upon termination of this Agreement for an Event of Design-Builder Default pursuant to [Article 15](#), whichever is earlier. Design-Builder shall deliver to Owner such assignments, bills of sale, or other documents as reasonably requested by Owner to evidence such transfer of title.

14.2 Design Work Product

14.2.1 Ownership of Design Work Product. Unless otherwise provided, all Design Work Product ("Materials") produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the Owner. Owner shall be considered the author of such Materials. In the event the Materials are not considered "works for hire," under the U.S. Copyright Laws, Design-Builder hereby irrevocably assigns all right, title, and interest in Materials, including all intellectual property rights, to Owner effective from the moment of creation of such Materials. Materials means all items in any format and includes Construction Documents, specifications, electronic data, CAD files, drawings, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate preexisting materials not produced under the contract, Design-Builder hereby grants to Owner a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. Design-Builder warrants and represents that Design-Builder has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to Owner. Design-Builder shall exert all reasonable effort to advise Owner, at the time of delivery of data furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. Owner shall receive prompt written notice of each notice or claim of infringement received by the Design-Builder with respect to any data delivered under this Agreement. Owner shall have the right to modify or remove any restrictive markings placed upon the data by the Design-Builder.

14.2.2 Reuse of Design Work Product. The Design Work Product is not intended or represented to be suitable for reuse by Owner or others on expansions of the Project or on any other project. Any reuse without prior written verification or adaptation by Design-Builder or applicable Subcontractors for the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Design-Builder or applicable Subcontractors.

ARTICLE 15: DEFAULT OF DESIGN-BUILDER

15.1 Events of Default by Design-Builder. Design-Builder shall be in default hereunder upon the occurrence of any one of the following events, which shall be events of default (each an "Event of Design-Builder Default") if not cured by Design-Builder within fourteen (14) days following delivery to Design-Builder of a notice of such event from Owner:

15.1.1 Failure to Prosecute Work. Design-Builder fails to prosecute the Work or any portion thereof with sufficient diligence to ensure Substantial Completion or Final Completion within the Guaranteed Completion Date(s);

15.1.2 Failure to Correct Work. Design-Builder fails to replace or correct Work not in conformance with the Contract Documents;

15.1.3 Failure to Provide Adequate Labor and Materials. Design-Builder fails to supply skilled workers or proper equipment and materials

15.1.4 Failure to Pay. Design-Builder fails to make prompt payment due to Subcontractors or any other entity or person who provides services or performs any aspect of the Work;

15.1.5 Failure to Comply with Laws. Design-Builder fails to comply with Governmental Rules or Governmental Approvals;

15.1.6 Material Breach. Design-Builder is in material breach of any provision of the Contract Documents.

15.2 Owner's Remedies Against Design-Builder. The provisions of [Article 11](#) notwithstanding, if an Event of Design-Builder Default has occurred and has not been cured after Owner's fourteen (14) day notice pursuant to [Section 15.1](#), Owner shall have the right immediately to terminate this Agreement, in addition to any rights and remedies that may be available at law or in equity or as provided herein. If it is subsequently determined that Owner was not entitled to terminate this Agreement for Design-Builder default, this Agreement shall be deemed terminated under [Article 16](#).

15.3 Additional Owner's Rights Upon Design-Builder Default. If Owner elects to terminate this Agreement pursuant to [Section 15.2](#), Design-Builder shall provide Owner with the right to continue to use any and all Work, including but not limited to any Work developed by Design Consultants, Owner deems necessary. Furthermore, Owner shall have the right to take possession of and Design-Builder shall make available to Owner all equipment and materials, construction equipment and other components of the Work, whether located at the Site or elsewhere, on the date of such termination for the purpose of completing the Work, and Owner may employ any other person or entity (sometimes hereinafter referred to as "Replacement Design-Builder") to finish the Work in accordance with the terms of this Agreement by whatever method Owner may deem expedient. Owner shall make such expenditures as in Owner's sole judgment will best accomplish the timely completion of the Project, provided Owner shall not be required or expected to mitigate any such costs by terminating, repudiating or renegotiating any agreement entered into between Design-Builder and any Subcontractor, including those agreements with Design Consultants.

15.4 General Obligations. If Owner elects to terminate this Agreement pursuant to [Section 15.2](#), Design-Builder shall, at Owner's request and at Design-Builder's expense, perform the following services relative to the Work so affected:

15.4.1 Inventory Equipment, Etc. Assist Owner in preparing an inventory of all equipment and other components of the Work in use or in storage at the Site and elsewhere;

15.4.2 Assign Subcontracts, Etc. Assign to Owner or to any Replacement Design-Builder designated by Owner, without any right to compensation not otherwise provided for herein, title to all Work not already owned by Owner, together with all subcontracts and other contractual agreements (including warranties) and rights thereunder as may be designated by Owner, all of which subcontracts and contractual agreements shall be so assignable, and assign to Owner to the extent assignable all issued permits, licenses, authorizations and approvals then held by Design-Builder pertaining to the Work which have been procured in connection with performance of the Work, including but not limited to those associated with Design Consultants;

15.4.3 Deliver Design Work Product. Deliver to Owner all Design Work Product as may be requested by Owner for the completion and/or operation of the Project; and

15.5 Payment Obligations. If Owner terminates this Agreement, as soon as practicable after Final Completion of the Project, Owner shall determine the total reasonable and necessary expense incurred and accrued in connection with the termination of this Agreement (including all legal fees and expenses) and the completion of the Work including, without limitation, all amounts charged by any Replacement Design-Builder to finish the Work based on the obligations such Replacement Design-Builder assumes

under this Agreement and under any of Design-Builder's subcontract(s) or other contractual agreement(s) that Design-Builder has assigned to Owner or to such Replacement Design-Builder pursuant to [Section 15.4.2](#) and additional reasonable and necessary overhead incurred and accrued by Owner to effect such takeover and to complete the Work. Design-Builder shall be entitled to receive the balance due of the Contract Sum minus the sum of: (a) Owner's expenses incurred in connection with the termination of this Agreement and the completion of the Work as determined in accordance with the preceding sentence and (b) all Liquidated Damages owed by Design-Builder. If the sum of such Liquidated Damages and the total expense so incurred by Owner in completing the Work exceeds the balance of the Contract Sum unpaid at the time of Design-Builder's default, then Design-Builder shall be liable for and shall pay to Owner the amount of such excess within twenty (20) business days following receipt of Owner's demand for such payment. Design-Builder obligations for payment shall survive termination.

15.6 No Relief of Responsibility. Termination of the Work in accordance with this [Article 15](#) shall not relieve Design-Builder or its surety of any responsibilities for Work performed.

ARTICLE 16: TERMINATION FOR CONVENIENCE

16.1 Owner's Right to Terminate Agreement for Convenience. Owner has the right, upon written notice, to terminate this Agreement for its convenience if Owner determines that such termination is in Owner's best interests.

16.2 Design-Builder's Responsibility Upon Termination for Convenience. Unless Owner directs otherwise, after receipt of a written notice of termination for either cause or convenience, Design-Builder promptly shall:

- (1) Stop performing Work on the date and as specified in the notice of termination;
- (2) Place no further orders or subcontracts for materials, equipment, services or facilities, except as may be necessary for completion of such portion of the Work as is not terminated;
- (3) Cancel all orders and subcontracts, upon terms acceptable to Owner, to the extent that they relate to the performance of Work terminated;
- (4) Assign to Owner all of the right, title, and interest of Design-Builder in all orders and subcontracts;
- (5) Take such action as may be necessary or as directed by Owner to preserve and protect the Work, Site, and any other property related to this Project in the possession or control of Design-Builder (or Design-Builder's agents) in which Owner has an interest; and
- (6) Continue performance only to the extent not terminated.

16.3 Equitable Adjustment for Termination for Convenience. If Owner terminates the Work for convenience, Design-Builder shall be entitled to be paid the prorated portion of the Contract Sum for all work properly performed by Design-Builder prior to the effective date of the termination for convenience, plus the reasonable administrative and wind-down expenses associated with such termination. The preceding amount shall be reduced by amounts previously paid by Owner to Design-Builder and any amounts which Owner has the right to offset or withhold by the terms of the Contract Documents. Notwithstanding the above, in no event shall Design-Builder ever be entitled to recover: (a) profit or unabsorbed overhead in connection with work not actually performed or future work; (b) amounts that would result in the Design-Builder receiving payments that it would not have been entitled to receive under the Contract Documents if the Design-Builder was not terminated for convenience; or (c) amounts that would cause the total payments received by the Design-Builder to exceed the Contract Sum.

ARTICLE 17: SUSPENSION OF WORK

17.1 Owner's Suspension of Work for Convenience. Owner may, for its convenience and for any reason, suspend the Work in whole or in part at any time by written notice to Design-Builder, stating the nature, effective date and anticipated duration of such suspension, whereupon Design-Builder shall suspend the Work to the extent specified and shall place no further orders or subcontracts relating thereto. During the period of any such suspension, Design-Builder shall protect and care for all Work, equipment and materials at the Site or at the storage areas under its responsibility. If Design-Builder claims that the suspension has affected either the Contract Sum or Guaranteed Completion Date(s), Design-Builder shall be entitled to submit a request for adjustment in accordance with [Articles 8, 9 and/or 10](#), as applicable. Design-Builder shall use its best efforts to minimize the costs and expenses associated with a suspension of the Work.

17.2 Owner's Suspension of Work for Cause. If Design-Builder fails or refuses to perform its obligations in accordance with the Contract Documents, Owner may order Design-Builder, in writing, to stop the Work, or any portion thereof, until satisfactory corrective action has been taken. Design-Builder shall not be entitled to an equitable adjustment in the Contract Sum or Guaranteed Completion Date(s) for any increased cost or time of performance attributable to Design-Builder's failure or refusal to perform or from any reasonable remedial action taken by Owner based upon such failure.

ARTICLE 18: INSURANCE

18.1 Insurance Carried by Design-Builder

18.1.1 Design-Builder's Liability Insurance. Prior to commencement of the Work, Design-Builder shall obtain all the insurance required by the Contract Documents and provide evidence satisfactory to Owner that such insurance has been procured. Review of Design-Builder's insurance by Owner shall not relieve or decrease the liability of Design-Builder. Companies writing the insurance to be obtained by this part shall be licensed to do business in the State of Washington. The Contract Sum includes the cost of all insurance and bond costs required to complete the Work. Insurance carriers providing insurance in accordance with the Contract Documents shall be acceptable to Owner, and its A. M. Best rating shall be indicated on the insurance certificates.

18.1.1.1 Insurance Coverage. Design-Builder shall maintain the following insurance coverage during the Work and for one year after Final Acceptance. Design-Builder shall also maintain the following insurance coverage during the performance of any corrective Work required by [Article 13](#). Coverage shall be in the amounts set forth in –this [Article 18 - Schedule 18.1](#).

- (a) Commercial General Liability (CGL) on the ISO 1986 New Occurrence Form or its equivalent such as ISO Form CG 00 01 with limits of no less than \$5,000,000 per occurrence for bodily injury, personal injury and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit. This coverage shall include:
 - (1) Completed operations/products liability;
 - (2) Explosion, collapse, and underground; and
 - (3) Employer's liability coverage - limits no less than One Million dollars \$1,000,000 per accident for bodily injury or disease.

- (b) Automobile Liability – ISO Form Number CA 0001 covering Code 1 (any auto), with limits no less than Five Million dollars (\$5,000,000) per accident for bodily injury and property damage (Combined Single Limit).

18.1.1.2 Scope of Coverage. All insurance coverages shall protect against claims for damages for personal and bodily injury or death, as well as claims for property damage, which may arise from operations in connection with the Work whether such operations are by Design-Builder or any Subcontractor.

18.1.1.3 Owner as Additional Insured. All insurance coverages shall be endorsed to include Owner as an additional named insured for Work performed in accordance with the Contract Documents, and all insurance certificates shall evidence Owner as an additional insured.

18.1.1.4 Insurance Certificates. Design-Builder shall furnish acceptable proof of insurance coverage on the State of Washington Certificate of Insurance form SF500A, dated July 2, 1992, prior to commencement of the Work. All insurance certificates shall name Owner as an additional insured and shall denote the Project by contract number(s) and Project title(s.) All insurance certificates shall specifically require forty-five (45) days prior notice to Owner of cancellation or a material change, except thirty (30) days for surplus line insurance.

18.1.2 Builder's Risk (Course of Construction) Insurance. Design-Builder shall purchase and maintain builder's risk property insurance in the amount of the Contract Sum on a replacement cost basis until Substantial Completion. The insurance shall cover the interest of Owner, Design-Builder, and any Subcontractors, as their interests may appear. There shall be no coinsurance penalty provisions.

18.1.2.1 Insurance to be "All Risk". Design-Builder's property insurance shall be placed on an "all risk" basis and insure against the perils of fire and extended coverage and physical loss or damage including theft, vandalism, malicious mischief, collapse, false work, temporary buildings, debris removal including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for Owner's and Owner's consultant's services and expenses required as a result of an insured loss. Design-Builder shall purchase and maintain boiler and machinery insurance covering insured objects during installation and testing until Final Completion. Such insurance shall name as insured Owner, Design-Builder, and all subcontractors who perform applicable work.

18.1.2.2 Waiver of Subrogation. Owner and Design-Builder waive all subrogation rights against each other, any Subcontractors, Owner's Representative, Owner's Design-Build Consultant and Owner's Design-Build Consultant's subconsultants, and Owner's Separate Contractors, if any, and any of their subcontractors, for damages caused by fire or other perils to the extent covered by property insurance obtained pursuant to this section or other property insurance applicable to the Work, except such rights as they have to proceeds of such insurance held by Owner as fiduciary. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

18.1.3 Errors and Omissions Professional Insurance. Design-Builder in conjunction with the primary design consultant (or consultants) shall purchase and maintain professional liability insurance for design services errors and omissions with minimum limits of no less than **One Million dollars (\$1,000,000) per claim, Three Million dollars (\$3,000,000) per claim, Five Million dollars (\$5,000,000) policy aggregate.** The professional liability insurance set forth herein shall

be renewed by Design-Builder for a period of no less than five (5) years after Final Completion. The insurance policy shall be endorsed to provide vicarious liability coverage.

18.1.4 Contractor's Pollution Legal Liability and/or Asbestos Legal Liability. Insurance involving environmental hazards in with limits no less than One Million dollars (\$1,000,000) per occurrence or claim and Two Million dollars (\$2,000,000) policy aggregate. The Contractor's Pollution Liability policy shall not contain lead-based paint or asbestos exclusions.

18.2 Insurance Carried by Owner. On and after Substantial Completion, Owner will carry insurance covering the Project in the types and amounts as Owner may from time to time deem prudent.

18.3 Subcontractors' Insurance. Before permitting any of its Subcontractors to perform any Work at the Site, Design-Builder shall obtain a certificate of insurance from each first tier Subcontractor evidencing that such Subcontractor has obtained insurance acceptable to Design-Builder in such amounts and against such risks as are identified in Schedule 18.1. Design-Builder shall provide Owner with copies of all certificates of insurance.

18.4 Additional Insurance Provision. For any claims related to this Project, Design-Builder's insurance coverage shall be primary insurance as respects the Owner, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the Owner, its officers, officials, employees or volunteers shall be excess of Design-Builder's insurance and shall not contribute with it.

ARTICLE 19: INDEMNIFICATION

19.1 Indemnity By Design-Builder. Design-Builder shall defend, indemnify, and hold Owner, Owner's Design-Build Consultant and their employees, agents and representatives harmless from and against all claims, demands, losses, damages, or costs, including but not limited to damages arising out of bodily injury or death to persons and damage to property, caused by or resulting from:

- (1) The sole negligence of Design-Builder or any of Subcontractor;
- (2) The concurrent negligence of Design-Builder, or any Subcontractor, but only to the extent of the negligence of Design-Builder or such Subcontractor; and
- (3) The use of any design, process, or equipment which constitutes an infringement of any United States patent presently issued, or violates any other proprietary interest, including copyright, trademark, and trade secret, provided, however, that such indemnity shall not apply to any design, process or equipment that has been specified by Owner in the RFP Documents.

19.2 No Limitation and Waiver of Immunity. In any action against Owner and any other person or entity indemnified in accordance with this [Article 19](#), by any employee or agent of Design-Builder, any Subcontractor, or anyone directly or indirectly employed by any of them, the indemnification obligation of this [Article 19](#) shall not be limited by a limit on the amount or type of damages, compensation, or benefits payable by or for Design-Builder or any Subcontractor under [Title 51 RCW](#) (the Industrial Insurance Act) or any other employee benefit acts. In addition, Design-Builder waives immunity as to Owner, in accordance with [Title 51 RCW](#). Owner and Design-Builder acknowledge this provision was mutually negotiated.

ARTICLE 20: NON-DISCLOSURE OF CONFIDENTIAL DOCUMENTS; PUBLIC RECORDS ACT

20.1 Distribution of Records. Design-Builder shall keep records of the distribution of documents, including those to all Subcontractors.

20.1.1 Disposal Methods. Design-Builder shall stipulate the method of disposal (shredding, burning, etc.) that is required to destroy the retired documents.

20.1.2 Backcharges. Instances of improper distribution of documents which create Owner expenses to control and secure the Contract Documents will be charged to Design- Builder.

20.1.3 Security of Documents. All parties having access to Contract Documents shall maintain reasonable security control over the premises in which they reside.

20.2 Public Records Act.

20.2.1 Public Records. All proceedings, records, contracts, and other public records relating to this Design-Build Contract shall be open to the inspection of any interested person, firm, or corporation in accordance with the Public Records Act, [RCW 42.56](#) and [RCW 39.10.470](#), except as provided in subsection (2) below.

20.2.2 Confidential Records. The term “confidential record” includes trade secrets, as defined in [RCW 19.108.010](#), or other proprietary information submitted by the Design-Builder in connection with an alternative public works transaction authorized by [RCW 39.10](#). Such confidential records shall not be subject to [RCW 42.56](#) if the Design-Builder specifically states in writing the reasons why protection is necessary, and identifies the data or materials to be protected. [RCW 39.10.470\(2\)](#).

DES will respond to any public records request for identified confidential records by notifying the Design-Builder of the request and of the date that DES will disclose such confidential records unless the Design-Builder obtains a court order directing DES to withhold such confidential records pursuant to [RCW 42.56.540](#).

ARTICLE 21: INDEPENDENT CONTRACTOR

21.1 Independent Contractor. Design-Builder is an independent contractor and nothing contained herein shall be construed as constituting any other relationship with. Neither Design-Builder nor any of its employees shall be deemed to be employees of Owner.

21.2 Design-Builder’s Responsibilities for its Employees. Subject to the provisions of the Contract Documents, Design-Builder shall have sole authority and responsibility to employ, discharge and otherwise control its employees.

21.3 Responsibilities of Design-Builder as Principal for its Subcontractors. Design- Builder has complete and sole responsibility as a principal for its agents, Subcontractors and all other hires to perform or assist in performing the Work.

ARTICLE 22: DIVERSE BUSINESS PARTICIPATION

22.1 Diverse Business Participation. In accordance with the legislative findings and policies set forth in [RCW 39.19](#), the State of Washington encourages participation in all of its contracts by firms certified by the Office of Minority and Women’s Business Enterprises (“OMWBE”), and set forth in [RCW 43.60A.200](#) for firms certified by the Washington State Department of Veterans Affairs (“DVA”), and set forth in [RCW 39.26.005](#) for firms that are Washington Small Businesses. Participation may be either on a direct basis or on a Subcontractor basis. However, no preference was included in the evaluation of Proposals submitted in response to the RFP, and no minimum level of minority and women-owned business enterprise, Washington Small Business, or Washington State certified Veteran Business participation is required as a condition for receiving an award of this Agreement. Any affirmative action requirements set forth in any federal Governmental Rules included or referenced in the Contract Documents will apply.

22.2 Definition. Diverse Business includes Washington small business, microbusiness, and minibusiness as defined in [RCW 39.26.010](#), and Veteran-owned businesses as defined in [RCW 43.60A.010](#). When referred to in this Agreement, the terms Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) will be as defined by OMWBE, [WAC 326-02-030](#).

22.3 Contact Information. For information on certified firms, Design-Builder may contact: [OMWBE \(http://omwbe.wa.gov/\)](#) at (360) 664-9750 or toll free (866) 208-1064 and [DVA \(http://www.dva.wa.gov/BusinessRegistry/Search.aspx\)](#) at (800) 562-0132 option '1'. Washington Department of Enterprise Services Business Diversity and Outreach Manager [Servando Patlan \(servando.patlan@des.wa.gov\)](#) at (360) 407-9390 for a list of self-certified Washington Small Businesses that downloaded the RFP and selected to allow their contact information to be shared.

22.4 Eligible Diverse Business. Diverse Business firms utilized for this project may be certified through the OMWBE, DVA, or self-certified in the [Washington Electronic Business Solution, "WEBS" \(http://www.des.wa.gov/services/ContractingPurchasing/Business/Pages/WEBSRegistration.aspx\)](#). If firms self-identify as MBE and/or WBE and/or veteran, and/or Washington Small/Mini/Micro Business firm the Design-Builder will encourage certification with the appropriate Washington state agency.

22.5 Diverse Business Voluntary Goals. Owner's aspirational goals are: 10% Minority Owned Business certified by OMWBE, 6%, Women Owned Business certified by OMWBE, 5% Veteran Owned Business certified by DVA. 5% Washington Small Businesses self-identified in WEBS. These goals are voluntary.

22.6 Intent to Use Diverse Businesses. If any part of the Work, including the supply of equipment and materials, is anticipated to be subcontracted, then prior to receipt of the first payment, Design-Builder shall submit a list of all Subcontractors it intends to use, designate whether any of the Subcontractors are registered as a Washington Small Business, MiniBusiness, or Microbusiness in WEBS or Washington state certified MBE, WBE, MWBE, Veteran Owned and/or Self-identified firms, indicate the anticipated dollar value of each Washington Small Business, Washington Minibusiness, Washington Microbusiness, MBE, WBE, MWBE, or Veteran Owned subcontract, and provide Tax Identification Number (TIN).

22.7 Diverse Business Participation. The Design-Builder is required to register and create an account in the DES Diversity Compliance program (B2Gnow) at <https://des.diversitycompliance.com/>. If any part of the Work, including the supply of equipment and materials, is actually subcontracted during completion of the Work, then the Design-Builder shall report all participation indicating what Washington Small Business, Washington Minibusiness, Washington Microbusiness, MBE, WBE, MWBE, or Veteran Owned and/or Self-identified firms were used and the dollar value of their subcontracts.

22.8 Not Exclusive. The provisions of this [Article 22](#) are not intended to replace or otherwise change the requirements of [RCW 39.30.060](#).

22.9 Maintenance of Records. Design-Builder shall maintain, for at least three (3) years after Final Completion, relevant records and information necessary to document the level of utilization of Diverse Businesses and other businesses as Subcontractors on this Project, as well as any efforts Design-Builder made to increase the participation of Diverse Businesses as listed in [Section 22.10](#). Design-Builder shall also maintain, for at least three (3) years after Final Completion, a record of all quotes, bids, estimates, or proposals submitted to Design-Builder by all businesses seeking to participate as Subcontractors on this Project. Owner shall have the right to inspect and copy such records. If this Agreement involves federal funds, Design-Builder shall comply with all record keeping requirements set forth in any federal Governmental Rules referenced in the Contract Documents.

22.10 Advertisements. Design-Builder shall advertise opportunities for Subcontractors in a manner reasonably designed to provide Diverse Businesses capable of performing the work with timely notice of such opportunities, and all advertisements shall include a provision encouraging participation by Diverse Businesses. Advertising may be done through general advertisements (e.g. newspapers, journals, etc.)

or by soliciting bids directly from Diverse Businesses. Design-Builder shall provide Diverse Businesses that express interest with adequate and timely information about plans, specifications, and requirements of the Project.

22.11 Non-Discrimination. Design-Builder shall not create barriers to open and fair opportunities for all businesses, including Diverse Businesses, to participate in all state contracts and to obtain or compete for contracts and subcontracts as sources of supplies, equipment, construction and services. In considering offers from and doing business with subcontractors and suppliers, Design-Builder shall not discriminate on the basis of race, color, creed, religion, sex, age, nationality, marital status, or the presence of any mental or physical disability in an otherwise qualified disabled person.

22.12 Violations. Any violation of the mandatory requirements of this part of the Agreement shall be a material breach of contract for which Design-Builder may be subject to a requirement of specific performance, or damages and sanctions provided by contract, by [RCW 39.19.090](#), or by other applicable laws.

ARTICLE 23: PREVAILING WAGES AND APPRENTICESHIP

23.1 Prevailing Wages. Design-Builder shall pay the prevailing rate of wages to all workers, laborers, or mechanics employed in the performance of any part of the Work in accordance with [RCW 39.12](#) and the Governmental Rules of the Washington State Department of Labor and Industries. The schedule of prevailing wage rates for the locality or localities of the Work is determined by the Industrial Statistician of the Department of Labor and Industries. It is Design- Builder's responsibility to verify the applicable prevailing wage rate at the time of its Proposal.

23.1.1 Wage Rates. Before commencing the Work, Design-Builder shall file a statement under oath with Owner and with the Director of Labor and Industries certifying the rate of hourly wage paid and to be paid each classification of laborers, workers, or mechanics employed upon the Work by Design-Builder and all Subcontractors. Such rates of hourly wage shall not be less than the prevailing wage rate.

23.1.2 Disputes. Disputes regarding prevailing wage rates shall be referred for arbitration to the Director of the Department of Labor and Industries. The arbitration decision shall be final and conclusive and binding on all parties involved in the dispute as provided for by [RCW 39.12.060](#).

23.1.3 Applications for Payment. Each Application for Payment submitted by Design- Builder shall state that prevailing wages have been paid in accordance with the pre-filed statement(s) of intent, as approved. Copies of the approved intent statement(s) shall be posted on the Site with the address and telephone number of the Industrial Statistician of the Department of Labor and Industries where a complaint or inquiry concerning prevailing wages may be made.

23.1.4 Fees. Design-Builder shall pay to the Department of Labor and Industries the currently established fee(s) for each statement of intent and/or affidavit of wages paid submitted to the Department of Labor and Industries for certification.

23.1.5 Intent to Pay Prevailing Wages. Copies of approved Intents to Pay Prevailing Wages for Design-Builder and all Subcontractors shall be submitted with Design-Builder's first Application for Payment. As additional Subcontractors perform Work on the Project, their approved Intent forms shall be submitted with Design-Builder's next Application for Payment.

23.1.6 Certified Payroll Copies. Design-Builder and all Subcontractors shall promptly submit to Owner certified payroll copies if requested by Owner.

23.2 Apprenticeship

23.2.1 Minimum Levels of Apprenticeship Participation and Voluntary Diversity Goals. In accordance with [RCW 39.04.320](#) and [Executive Order 00-01](#) the State of Washington requires Apprenticeship Participation for the Project. The minimum required percentage of apprentice labor hours compared to the total labor hours is fifteen percent (15%). Voluntary workforce diversity goals have been established for the apprentice hours. These goals are that one-fifth (1/5) of the apprentice hours be performed by minorities, and one-sixth (1/6) of the apprentice hours be performed by women.

23.2.2 Apprenticeship Programs. Apprentice participation under this Agreement may be counted towards the required percentage only if the apprentices are from an apprenticeship program registered and approved by the [Washington State Apprenticeship and Training Council](#).

23.2.3 Statement of Apprenticeship/Journeyman Participation. Design-Builder shall submit a "Statement of Apprentice/Journeyman Participation" electronically on forms provided by Owner, with every request for progress payment. Design-Builder shall submit consolidated and cumulative data collected by Design-Builder and collected from all Design-Builder's Subcontractors. The data to be collected and submitted include the following:

- (1) Design-Builder name and address;
- (2) Contract number;
- (3) Project name;
- (4) Contract value;
- (5) Reporting period "Notice to Proceed" through "Invoicing Date";
- (6) Apprentice Name/Craft/Trade/Registration Number/occupation of all (Design Builder or Subcontractor trades working on the project) apprentices and journeymen.
- (7) Total number of hours worked by apprentices categorized by gender and ethnicity;
- (8) Total number of hours worked by journeymen categorized by gender and ethnicity;
- (9) Cumulative combined total of apprenticeship and journeymen labor hours; and
- (10) Total percentage of apprentice hours worked.

23.2.4 Changes in Apprentice Participation. No changes to the required percentage of apprentice participation shall be allowed without written approval of Owner. In any request for the change Design-Builder shall clearly document the lack of availability of apprentices in the specific geographic area of the job and clearly demonstrate a good faith effort to comply with the requirements for apprentice participation.

23.3 Violation. Any violation by Design-Builder of the mandatory requirements of this [Article 23](#) shall be a material breach of this Agreement.

ARTICLE 24: NOTICES AND COMMUNICATIONS

24.1 Notices. Any formal notice pursuant to the terms and conditions of the Contract Documents shall be in writing and either: (a) delivered personally; (b) sent by certified mail, return receipt requested; (c) sent by a recognized overnight mail or courier service with delivery receipt required; or (d) sent by email and acknowledged by recipient, to be followed on the same day by either (a), (b) or (c) above:

If to Design-Builder:

If to Owner:

Design Builder company
Address

Phone: ()
Email:

Attention:

Department of Enterprise Services
PO Box 41476
1500 Jefferson St SE
Olympia, WA 98504

Phone: (360) 902-7272
Email: yelena.semenova@des.wa.gov

Attention: Yelena Semenova

With a copy to:

With a copy to:

Either Party may change its address or the Party to notify by a notice delivered in accordance with this Section.

24.2 Effectiveness of Notices. Notices shall be effective when received by the Party to whom it is addressed.

ARTICLE 25: PROJECT PLANNING AND CONTROL

25.1 Project Schedule. [Exhibit G – Schedule 25.1](#) sets forth Design-Builder's Level 1 Critical Path Method (CPM) schedule for executing the Work. Within thirty (30) days of Notice to Proceed, Design-Builder shall submit to Owner, for its review and approval, a Level 3 CPM schedule that includes, among other things: (a) the order in which Design-Builder proposes to carry out the Work (including each stage of design, procurement, manufacture, delivery to Site, construction, inspection and testing); and (b) the times when submissions and approvals or consents by Owner are required. If Owner does not approve such submission, Design-Builder shall resubmit a revised schedule to Owner within seven (7) days of its receipt of Owner's comments on such schedule. This process shall continue until such time as a schedule is so approved by Owner ("Project Schedule").

25.2 Updates. The Project Schedule shall be updated monthly by Design-Builder and provided to Owner to keep it advised of progress and significant changes to Design-Builder's schedule. Failure to provide such updates shall be grounds for Owner to withhold approval for all or part of Design-Builder's invoices until such time Design-Builder furnishes such updates. If any updated schedule shows a change in the logic of the critical path from that established in the preceding schedule, Design-Builder shall provide an explanation for such change. If Owner disagrees with Design-Builder's explanation by notifying Design-Builder to such effect and if such disagreement is not subsequently resolved, then such schedule shall not be considered binding for purposes of computing schedule adjustments under [Article 10](#).

25.3 Schedule Format. Design-Builder shall use a mutually agreed scheduling program as the format for all Project Schedules and shall provide to Owner an electronic copy of the Level 1 CPM schedule, the original Project Schedule and each updated Project Schedule.

25.4 Other Information and Alteration. Design-Builder shall, whenever required by Owner, provide in writing a general description of the arrangements and methods which Design-Builder proposes to adopt for the execution of the Work. No significant alteration to the Project Schedule, or to such arrangements and methods, shall be made without informing Owner and any alterations made shall reflect the requirement for coordination of the Work with the actions and obligations of Owner and the work to be carried out by Owner's Separate Contractors. If any alteration affects any such actions, obligations or Work, it shall not be made without the prior approval of Owner. If the progress of the Work does not conform to the Project Schedule, Owner may instruct Design-Builder to revise the Project Schedule, showing the modifications necessary to achieve completion within the Guaranteed Completion Date(s).

25.5 Owner's Separate Contractors. Design-Builder shall include the activities of Owner's Separate Contractors into the Project Schedule. Design-Builder shall cooperate with Owner's Separate Contractors and coordinate its activities with those of such contractors so that the Project can be completed in an orderly and coordinated manner without unreasonable disruption.

25.6 Owner's Review and Approval of Project Schedule. Owner's review and approval of the Project Schedule shall not be construed as relieving Design-Builder of its complete and exclusive control and responsibility over the means, methods, sequences and techniques for executing the Work and does not constitute approval or acceptance of Design-Builder's ability to complete the Work within the Guaranteed Completion Date(s).

25.7 Monthly Reports. Monthly reports shall be prepared by Design-Builder and submitted to Owner in six (6) copies. The first report shall cover the period up to the end of the calendar month after that in which the effective date occurred; reports shall be submitted monthly thereafter, on or before the tenth working day of each month. Reporting shall continue until Owner's Acceptance of the Final Completion Certificate. Each report shall include:

- (1) Photographs and detailed descriptions of progress, including each stage of design, procurement, manufacture, delivery to Site, construction, erection, testing and commissioning;
- (2) Charts showing the status of all design documents, purchase orders, manufacturing and construction;
- (3) For the manufacture of each item of equipment and materials, the name of manufacturer, manufacture location, percentage progress, and the actual or expected dates of commencement of manufacture, Design-Builder's inspections, tests and delivery,
- (4) Records of personnel and Design-Builder's equipment on Site;
- (5) Copies of quality assurance documents, test results and certificates of equipment and materials;
- (6) Safety statistics, including details of any hazardous incidents and activities relating to environmental aspects and public relations;
- (7) Monthly updates to the Project Schedule, including but not limited to: (a) comparisons of actual and planned progress; (b) details of any aspects of the Work which may jeopardize the completion in accordance with the Contract Documents; and (c) measures being (or to be) adopted to overcome such aspects; and
- (8) Unresolved claims or disputes that involve requests for extension to the Guaranteed Completion Date(s) or adjustment to any other date or milestone set forth in the Contract Documents or increases in the Contract Sum.

ARTICLE 26: VALUE ENGINEERING

26.1 Required Information. If Design-Builder is interested in developing and submitting a Value Engineering Change Proposal (VECP), it shall, at its own expense, provide the following information to Owner with each VECP:

- (1) A statement that the submission is a VECP, and a narrative description of the proposed change;
- (2) A description of the existing requirements under the Contract Documents that are involved in the proposed change;
- (3) A discussion of the differences between existing requirements and the proposed change, together with advantages and disadvantages of each changed item;

- (4) An itemization of the requirements of the Contract Documents (with reference to specific sections) that must be changed if the VECP is approved;
- (5) The justification for changes in function or characteristics of each item, and the effect of the change on the performance of the end item, as well as on the meeting of requirements contained in the Contract Documents;
- (6) The date by which a Change Order adopting the VECP must be issued in order to obtain the maximum cost reduction, noting any effect on the Project Schedule or in the Guaranteed Completion Date(s);
- (7) A complete cost analysis including: (a) a cost estimate for the existing requirements under the Contract Documents compared to Design-Builder's cost estimate of the proposed changes; and (b) an estimate of any additional costs that will be incurred by Owner;
- (8) Costs of development and implementation of the VECP by Design-Builder; and
- (9) Any additional information requested by Owner.

26.2 Owner's Action on a VECP

26.2.1 Owner's Processing of VECP. Upon receipt of a VECP, Owner will process it expeditiously, provided, however, that if Owner determines that a VECP requires excessive time or costs for review, evaluation or investigations, or are not consistent with Owner's design policies and basic design criteria, then Owner shall have the right to reject the VECP without any review. Design-Builder may withdraw all or part of any VECP at any time prior to any action by Owner. Owner shall bear its own costs in connection with the review and processing of a VECP.

26.2.2 Owner's Approval or Rejection of a VECP. Owner may approve in whole or in part, by Change Order, any VECP submitted. Until a Change Order is issued on a VECP, Design-Builder shall remain obligated to perform in accordance with the Contract Documents. The decision of Owner as to the rejection or approval of any VECP shall be at the sole discretion of Owner, shall be final and shall not be subject to any further dispute resolution or appeal.

26.2.3 Liability. Owner shall not be liable for any delay in acting upon any proposal submitted pursuant to this [Article 26](#). Design-Builder shall have no claim against Owner for any additional costs or delays resulting from the rejection of a VECP. If a VECP is approved, Design-Builder bears full responsibility for all aspects of the VECP, including the ability of the changed design to meet all requirements of the Contract Documents (as may be modified by the VECP).

ARTICLE 27: MISCELLANEOUS

27.1 Severability. If any provision of this Agreement or the Contract Documents is held to be invalid or unenforceable, such provision shall not affect or invalidate the remainder of this Agreement or the Contract Documents, and to this end the provisions of this Agreement and the Contract Documents are declared to be severable. If such invalidity becomes known or apparent to the parties, the parties agree to negotiate promptly in good faith in an attempt to amend such provision as nearly as possible to be consistent with the intent of this Agreement of the Contract Documents.

27.2 Governing Law, Jurisdiction, & Venue. The validity, construction, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Washington, without regard to its conflict of laws rules. The Parties agree that in any action or dispute resolution process arising out of the terms, enforcement, or breach of this Agreement jurisdiction and venue shall lie in Thurston County Superior Court.

27.3 Waiver. Failure of either Party to insist upon the strict performance of any of the terms and conditions hereof, or failure to exercise any rights or remedies provided herein or by law, or to notify the

other Party in the event of breach, shall not release the other Party of any of its obligations under this Agreement, nor shall any purported oral modification or rescission of this Agreement by either Party operate as a waiver of any of the terms hereof. No waiver by either Party of any breach, default, or violation of any term, warranty, representation, agreement, covenant, right, condition, or provision hereof shall constitute waiver of any subsequent breach, default, or violation of the same or other term, warranty, representation, agreement, covenant, right, condition, or provision.

27.4 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and assigns. Neither Party shall assign the Work without written consent of the other, except that Design-Builder may assign the Work for security purposes, to a bank or lending institution authorized to do business in the State of Washington. If either Party attempts to make such an assignment without such consent, that Party shall nevertheless remain legally responsible for all obligations set forth in the Contract Documents.

27.5 Ethics in Public Service Act. Design-Builder shall ensure that its Owner(s) and employees, and those of its Subcontractors, comply with the Ethics in Public Service Act, [RCW 42.52](#), which, among other things, prohibits state employees from having an economic interest in any public works contract that was made by, or supervised by, that employee. Design-Builder shall remove or cause to be removed, at its sole cost and expense, any of its employees, or the employees of any Subcontractor, if they are in violation of this Act.

27.6 Third-Party Beneficiaries. Except with respect to indemnification obligations contained herein in favor of third parties, the provisions of this Agreement are intended for the sole benefit of Owner and Design-Builder, and there are no third-party beneficiaries other than assignees contemplated by the terms herein; provided, that Design-Builder's Subcontractors shall be entitled to the benefit of, and enforce, the provisions of this Agreement providing for waiver of rights or claims against, and release or limitation of liability of, such Subcontractors.

27.7 Non-Discrimination. Discrimination in all phases of employment is prohibited by, among other laws and regulations, Title VII of the Civil Rights Act of 1964, the Vietnam Era Veterans Readjustment Act of 1974, sections 503 and 504 of the Vocational Rehabilitation Act of 1973, the Equal Employment Act of 1972, the Age Discrimination Act of 1967, the Americans with Disabilities Act of 1990, the Civil Rights Act of 1991, Presidential Executive Order 11246, Executive Order 11375, the Washington State Law Against Discrimination, [49.60 RCW](#), and [Gubernatorial Executive Order 85-09](#). These laws and regulations establish minimum requirements for affirmative action and fair employment practices which Design-Builder must meet. Design-Builder shall not discriminate against any employee or applicant for employment because of race, creed, color, national origin, sex, age, marital status, or the presence of any physical, sensory, or mental disability, Vietnam era veteran status, or disabled veteran status, nor commit any other unfair practices as defined in [49.60 RCW](#).

27.8 Time Computations. When computing any period of time, the day of the event from which the period of time begins shall not be counted. The last day is counted unless it falls on a weekend or legal holiday in the State of Washington, in which event the period runs until the end of the next day that is not a weekend or holiday. When the period of time allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays are excluded from the computation.

27.9 Records Retention. The wage, payroll, and cost records of Design-Builder, and its Subcontractors, and all records subject to audit in accordance with [Section 11.6.1](#) above, shall be retained for a period of not less than six (6) years after the date of Final Acceptance.

27.10 Antitrust Assignment. Owner and Design-Builder recognize that in actual economic practice, overcharges resulting from antitrust violations are in fact usually borne by the purchaser. Therefore, Design-Builder hereby assigns to Owner any and all claims for such overcharges as to goods, materials, and equipment purchased in connection with the Work performed in accordance with the Contract Documents, except as to overcharges which result from antitrust violations commencing after the Contract Sum is established and which are not passed on to Owner under a Change Order. Design-

Builder shall put a similar clause in its Subcontracts, and require a similar clause in its sub-Subcontracts, such that all claims for such overcharges on the Work are passed to Owner by Design-Builder.

27.11 Time is of the Essence. Time is of the essence for each and every provision of this Agreement.

27.12 No Agency. The parties agree that no agency, partnership, or joint venture of any kind shall be or is intended to be created by or under this Agreement. Neither Party is an agent of the other Party nor authorized to obligate it.

27.13 Survival. All representations, warranties, covenants, agreements, and indemnities set forth in or otherwise made pursuant to this Agreement shall survive and remain in effect following the expiration or termination of this Agreement, provided, however, that nothing herein is intended to extend the survival beyond any applicable statute of limitations periods.

27.14 Integrated Agreement; Modification. This Agreement in combination with the Contract Documents constitutes the entire agreement and understanding of the parties with respect to the subject matter and supersedes all prior negotiations and representations. All appendices, annexes, and exhibits referred to herein are deemed to be incorporated in this Agreement in their entirety. There are no representations or understandings of any kind not set forth herein. This Agreement and the Contract Documents may not be modified except in writing and signed by the Parties.

27.15 Interpretation. Each Party acknowledges that it and its legal counsel have reviewed this Agreement. The Parties agree that the terms and conditions of this Agreement shall not be construed against any Party on the basis of such Party's drafting, in whole or in part, of such terms and conditions.

27.16 Further Assurances. In addition to the actions specifically mentioned in this Agreement, the Parties shall each do whatever may reasonably be necessary to accomplish the transactions contemplated in this Agreement including, without limitation, executing any additional documents reasonably necessary to effectuate the provisions and purposes of this Agreement.

27.17 Headings. The headings in this Agreement are for convenience only and are not intended to, and shall not be construed to, limit, enlarge, or affect the scope or intent of this Agreement nor the meaning of any provisions hereof.

27.18 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, and all of which counterparts together shall constitute the same instrument which may be sufficiently evidenced by one counterpart. Execution of this Agreement at different times and places by the parties shall not affect the validity thereof so long as all the parties hereto execute a counterpart of this Agreement.

Signatures

Design-Build Contract
2016-173 G (2-1)
Clover Park Technical College
Center for Advanced Manufacturing Technologies

Executed and effective as of the date first above written.

STATE OF WASHINGTON
DEPARTMENT OF ENTERPRISE SERVICES

[Insert Name of Company]
DESIGN BUILDER

By: _____
Name

Title

By: _____
Name

Title

List of Exhibits

- Exhibit A. Schedule 3.2.2 – Project Management/Key Personnel Organization Chart
- Exhibit B. Schedule 5.5.6 – Insurance & Bond Premiums
- Exhibit C. Schedule 5.8.1.1 – GMP Exhibit Documents
- Exhibit D. Schedule 5.8.1 – GMP Design-Build Contract Price Proposal
- Exhibit E. Schedule 9.2.8e – Rate Sheet/COP Cost Breakdown
- Exhibit F. Schedule 18.1 – Insurance Coverage Amounts
- Exhibit G. Schedule – 25.1- Design-Builder’s Level 1 Critical Path Method